

RECEIVED
COURT OF APPEALS
DIVISION ONE

JAN 25 2019

No. 68401-9-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In re Dependency of M.C.D.P.

MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF
IN SUPPORT OF APPELLANT

Glenn H.J. Woll, WSBA #19119
BAKER & McKENZIE LLP
452 Fifth Avenue
New York, NY 10018
Telephone: (212) 891-3533
Email: glenn.woll@bakermckenzie.com

Attorneys for *Amici Curiae*

Juvenile Law Center, The Barton Child
Law & Policy Center, The Center on
Children and Families, The Children's
Advocacy Institute, The Children's Law
Center of California, The National
Association of Counsel for Children,
The Support Center for Child Advocates,
The Women's Law Project, Professor
Michael J. Dale, Professor Theresa
Glennon, Professor Sara Jacobson,
Professor Wallace Mlyniec

I. RELIEF REQUESTED

Pursuant to Rule of Appellate Procedure 10.6, Juvenile Law Center, The Barton Child Law & Policy Center, The Center on Children and Families, The Children's Advocacy Institute, The Children's Law Center of California, The National Association of Counsel for Children, The Support Center for Child Advocates, The Women's Law Project, Professor Michael J. Dale, Professor Theresa Glennon, Professor Sara Jacobson, Professor Wallace Mlyniec (collectively, "*Amici*") hereby move for leave to file the attached Amicus Curiae Brief in support of Appellant. Amici respectfully submit this brief on grounds that it would assist the Court in its consideration of important issues arising in this case concerning the protection of legal rights of children. Amici respectfully state as follows:

II. IDENTITY OF *AMICI CURIAE*

Juvenile Law Center (JLC) is the oldest multi-issue public interest law firm for children in the United States, founded in 1975 to advance the rights and wellbeing of children in jeopardy. JLC pays particular attention to the needs of children who come within the purview of public agencies, such as abused and neglected children who are separated from their families and placed in foster care. JLC works to ensure that the

rights of children are respected and supported and that they are treated fairly by the systems that are supposed to help them. Since its founding, Juvenile Law Center has represented hundreds of abused and neglected children in child welfare proceedings and played a prominent role in ensuring that children in Pennsylvania have access to counsel at all stages of dependency and child welfare proceedings, including termination of parental rights. Juvenile Law Center's work is guided by the view that children have a constitutional right to counsel in all matters where the state is restricting their liberty or altering the familial relationships that are central to the future well being of the child.

The Barton Child Law & Policy Center is an interdisciplinary clinical program of Emory Law School dedicated to promoting and protecting the legal rights and interests of children involved with the juvenile court, child welfare and juvenile justice systems in Georgia. The Center achieves its reform objectives through research-based policy development, legislative advocacy, and holistic legal representation for individual clients. The Barton Center's children's rights agenda is based on the belief that policy and law should be informed by research and that legal service to children and families need to be holistic. The premise behind representing the "whole" child exists at the core of the Barton Center's mission and our approach to student instruction. That basis

recognizes that children should be viewed in their social and familial contexts and provided with individualized services to protect their legal rights, respond to their human needs, and ameliorate the social conditions that create risk.

The Barton Center has engaged in policy and legislative advocacy to promote children's rights since it was founded in March 2000. The Barton Center currently houses the Barton Public Policy and Legislative Advocacy Clinic, the Barton Juvenile Defender Clinic, and the Appeal for Youth Clinic, allowing us to provide a voice for youth justice issues through individual representation and systemic reform advocacy.

Legal services provided by the Barton Center are provided at no cost to our clients. The work of the Barton Center is funded by Emory Law School, private gifts, foundation grants, and contracts with a variety of organizations.

The Center on Children and Families (CCF) at the University of Florida Fredric G. Levin College of Law in Gainesville, Florida is an organization whose mission is to promote the highest quality teaching, research and advocacy for children and their families. CCF's directors and associate directors are experts in children's law, constitutional law, criminal law, family law, and juvenile justice, as well as related areas such

as psychology and psychiatry. CCF supports interdisciplinary research in areas of importance to children, youth and families, and promotes child-centered, evidence-based policies and practices in dependency and juvenile justice systems. Its faculty has many decades of experience in advocacy for children and youth in a variety of settings, including the Virgil Hawkins Civil Clinics and Gator TeamChild juvenile law clinic.

The Children's Advocacy Institute (CAI) (www.caichildlaw.org), founded at the nonprofit University of San Diego School of Law in 1989, is an academic, research and advocacy law firm. CAI represents the interests and rights of children and youth in impact litigation, legislative and regulatory advocacy, research and public education projects, and public service programs. CAI's academic component trains law students and attorneys to be effective child advocates. Active at both the state and federal level, CAI's advocacy program seeks to improve the status, health and well-being of children and youth in all areas of their lives, with special emphasis on improving the child protection and foster care systems and enhancing resources that are available to youth aging out of the foster care system and homeless youth. CAI is also a co-author of the second and third editions of *A Child's Right to Counsel: A National Report Card on Legal Representation for Abused and Neglected Children* which provides grades to all fifty states and the District of Columbia on their provision of

attorney representation for children in abuse and neglect proceedings. CAI Director Professor Robert C. Fellmeth is former President of the Board of the National Association of Counsel for Children (2010-2012), is counsel to the Board of Voices for America's Children and is the author of the text *Child Rights and Remedies* (Clarity, 2007, 2009, 2011). CAI has participated in impact litigation at the state and federal level, including the *Troxel* and *Camreta* in the U.S. Supreme Court.

The Children's Law Center of California, formerly known as The Children's Law Center of Los Angeles (www.clcla.org) is a non-profit organization that serves Los Angeles and Sacramento counties, where it provides counsel for abused and neglected children. It has been providing children with representation for 20 years and serves a greater number of children than any such organization in the country.

Founded in 1977, the National Association of Counsel for Children (NACC) is a 501(c)(3) non-profit child advocacy and professional membership association dedicated to enhancing the well being of America's children. The NACC works to strengthen legal advocacy for children and families by promoting well resourced, high quality legal advocacy; implementing best practices; advancing systemic improvement in child serving agencies, institutions and court systems; and promoting a

safe and nurturing childhood through legal and policy advocacy. NACC programs which serve these goals include training and technical assistance, the national children's law resource center, the attorney specialty certification program, policy advocacy, and the *amicus curiae* program. Through the *amicus curiae* program, the NACC has filed numerous briefs involving the legal interests of children and their families in state and federal appellate courts and the Supreme Court of the United States. The NACC uses a highly selective process to determine participation as *amicus curiae*. *Amicus* cases must pass staff and Board of Directors review using the following criteria: the request must promote and be consistent with the mission of the NACC; the case must have widespread impact in the field of children's law and not merely serve the interests of the particular litigants; the argument to be presented must be supported by existing law or good faith extension the law; there must generally be a reasonable prospect of prevailing. The NACC is a multidisciplinary organization with over 1500 members representing all 50 states and the District of Columbia. NACC membership is comprised primarily of attorneys and judges, although the fields of medicine, social work, mental health, education, and law enforcement are also represented.

The Support Center for Child Advocates (*Child Advocates*) is Philadelphia's volunteer lawyer program for abused and neglected

children in Philadelphia, representing 800 children each year. For all the children committed to *Child Advocates* care, lawyers and social workers strive to ensure safety, health, education, family, permanency and access to justice. Respected for diligent and effective advocacy, *Child Advocates* moves both public systems to deliver entitled services and private systems to open their doors to needy children and their families. *Child Advocates* supports recognition of a child's right to counsel in dependency matters and is active in state and national initiatives to achieve this goal.

The Women's Law Project (WLP) is a nonprofit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. The WLP's mission is to create a more just and equitable society by advancing the rights and status of women and girls. To this end, the WLP engages in high-impact litigation, advocacy, and education. Throughout its history, the Women's Law Project has engaged in extensive activities challenging gender discrimination in employment, education, insurance, and in family matters relating to custody, support, domestic violence and divorce. The WLP believes that women's rights and children's rights are significantly interconnected and that the right to legal representation for a dependent child in a family law proceeding that affects the child's most basic rights and interests of health, safety, and family is essential.

Professor Michael J. Dale is a national expert in the area of children's rights. He has been a member of the faculty at Nova Southeastern University Law Center in Fort Lauderdale, Florida since 1985, teaching courses in family law, juvenile law and in the family and juvenile clinic. He also teaches litigation courses including civil procedure, conflicts of laws, evidence, trial advocacy and international litigation. Before joining the Nova faculty Dale spent time in private law practice in Phoenix and was Executive Director of the Youth Law Center in San Francisco after serving as Attorney in Charge of the Special Litigation Unit of the Juvenile Rights Division of the Legal Aid Society of the City of New York. He has been a practicing lawyer specializing in civil rights litigation for 40 years. Professor Dale is the author of over seventy five articles focusing primarily on juvenile and children's law topics. He is also the author of the two volume text, *Representing the Child Client*, published by Matthew Bender Co.

Theresa Glennon is a Professor of Law at Temple University Beasley School of Law. Her teaching and scholarship focuses on the legal rights of children and families, with particular focus on family law, education, race and disability. Her family law publications include a wide range of topics, including assisted reproductive technologies, child custody and custody relocation disputes, the effort to harmonize family

law in Europe, paternity disputes, second parent adoptions, and the child welfare system. Her publications in the area of education law have focused primarily on the issues of race and disability in education. Professor Glennon has been a visiting fellow at the Centre for Family Research at the University of Cambridge, and she is trained as a mediator in divorce and child custody matters and serves as a volunteer mediator for the custody mediation project of Good Shepherd Mediation Program. She is also a member of the Board of Trustees of the Education Law Center in Pennsylvania.

Professor Sara Jacobson has served as Director of Trial Advocacy Programs and an Associate Professor at Temple University's Beasley School of Law since 2008, where she teaches Trial Advocacy. Prior to joining the faculty at Temple, Professor Jacobson worked at the Defender Association of Philadelphia as an Assistant Defender, serving for some time as the Assistant Chief of the Juvenile Unit. Professor Jacobson frequently works on and writes about juvenile and indigent defense policy issues with public interest organizations in Philadelphia. She is also part of the Civil Gideon Task force at the Philadelphia Bar Association.

Wallace Mlyniec is the former Associate Dean of Clinical Education and Public Service Programs, and currently the Lupo-Ricci

Professor of Clinical Legal Studies, and Director of the Juvenile Justice Clinic at Georgetown University Law Center. He teaches courses in family law and children's rights and assists with the training of criminal defense and juvenile defense fellows in the Prettyman Legal Internship Program. He is the author of numerous books and articles concerning criminal law and the law relating to children and families. Wallace Mlyniec received a Bicentennial Fellowship from the Swedish government of study their child welfare system, the Stuart Stiller Award for public service, and the William Pincus award for contributions to clinical education. He holds his B.S. from Northwestern University and his J.D. from Georgetown University. He is the Vice Chair of the Board of Directors of the National Juvenile Defender Center and former chair of the American Bar Association Juvenile Justice Committee.

III. INTEREST OF *AMICI*

To ensure fair and effective dependency proceedings for children, children should be provided counsel who can zealously advocate on their behalf, with undivided loyalty and the assurance of confidentiality in their interactions. Without the assistance of counsel, children's legal rights cannot be fully protected. As non-profit organizations and academicians advocating the rights and interests of children across the nation, *Amici*

seek to ensure enforcement of children's right to counsel where such results are at stake.

IV. FAMILIARITY WITH ISSUES

Amici are organizations and academicians dedicated to advocacy for children and have extensive legal and practical experience in issues regarding appointment of legal counsel for children in dependency proceedings.

V. SPECIFIC ISSUES TO BE ADDRESSED

Amici agree with Appellant's argument that the Federal and state Constitutions mandate counsel for youth in dependency proceedings. *Amici* will not repeat those arguments. Instead, the Brief of *Amici* augments Appellant's brief by discussing the additional point that providing children a statutory right to counsel in dependency matters is consistent with national trends and best practices, in addition to being solidly supported by Federal and state constitutional law. This persuasive argument is important, additional information to consider in this case.

VI. NEED FOR ADDITIONAL ARGUMENT

Amici believe that their specific experience with legal representation for children in dependency proceedings will assist the Court

in analyzing this case. The Supreme Court relied on Amicus Curiae briefs for statistics and studies with particular relevance to the issue in *In re Dependency of A.K.*, 162 Wn.2d 632, 635, 174 P.3d 11 (2007) (Madsen, J. concurring). *Amici* here are in the unique position of being able to aid the Court with information pertaining to the appointment of legal counsel for children in dependency proceedings.


VI. CONCLUSION

Wherefore, for the reasons stated, *Amici* request that the Court grant this motion and permit them to file the attached *Amici Curiae* Brief in support of Appellant.

Date: January 24, 2013

Respectfully submitted,

BAKER & McKENZIE LLP

By 

Glenn H.J. Woll, WSBA #19119

452 Fifth Avenue

New York, NY 10018

Telephone: (212) 891-3533

Email: glenn.woll@bakermckenzie.com

Attorneys for *Amici Curiae*

Juvenile Law Center, The Barton Child Law & Policy Center, The Center on Children and Families, The Children's Advocacy Institute, The Children's Law Center of California, The National

Association of Counsel for Children,
The Support Center for Child Advocates,
The Women's Law Project, Professor
Michael J. Dale, Professor Theresa
Glennon, Professor Sara Jacobson,
Professor Wallace Mlyniec

RECEIVED
COURT OF APPEALS
DIVISION ONE
JAN 25 2013

CERTIFICATE OF SERVICE

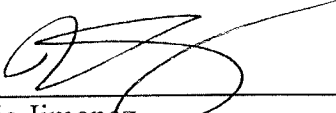
Julie Jimenez, certifies and states:

On January 24, 2013, I served a true and correct copy of the foregoing document on the following:

Benjamin Harris	cayactmb@uw.edu
Michael W. Collins	michaelc@atg.wa.gov
David Bruce Koch	kochd@nwattorney.net
Nielsen Broman Koch PLLc	Sloanej@nwattorney.net
Jeffrey Michael Hanson	jhanson@perkinscoie.com
Meloni L. Dizon	meloni.dizon@acapd.org
Lisa Kelly	Lisak2@uw.edu
Kathleen Carney Martin	kathleen.martin@kingcounty.gov
Sarah Jean Delaney	sarahd2@atg.wa.gov
Donna DePaola	dedonna3@aol.com
Harry H. Schneider, Jr.	hschneider@perkinscoie.com
Marvin Lee Gray, Jr.	montygray@dwt.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated January 24, 2013, at Palo Alto, California.



Julie Jimenez