

No. 46788-7-II

IN THE COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

Rachelle K. Black,

Appellant,

v.

Charles W. Black,

Respondent.

BRIEF OF AMICI CURIAE THE WASHINGTON STATE
PSYCHOLOGICAL ASSOCIATION, THE FAMILY
EQUALITY COUNCIL, AND PARENTS AND FRIENDS OF
LESBIANS AND GAYS WASHINGTON STATE COUNCIL

K&L GATES LLP
Laura K. Clinton, WSBA #29846
Alanna Peterson, WSBA #46502
Kendra Nickel-Nguy, WSBA #45520
925 Fourth Avenue, Ste. 2900
Seattle, WA 98104-1158
(206) 623-7580

*Attorneys for Amici Curiae
The Washington State
Psychological Association,
the Family Equality Council,
and Parents and Friends of
Lesbians and Gays
Washington State Council*

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INTRODUCTION

Divorce and remarriage are inherently difficult transitions for children, and the courts that oversee the development of parenting plans are charged with prioritizing the “best interests of the child” to ensure that parenting arrangements are not driven by prejudice or other inappropriate concerns.¹ Decades of scientific research confirm that sexual orientation is unrelated to whether parents can form and maintain loving and supportive relationships with their children. It is the quality of family relationships, not family structure, that determines children’s ability to adjust to life changes. This body of research also demonstrates that children benefit from open communication with their parents about new information, including a parent’s sexual orientation and new relationship with a same-sex partner.

The trial court in this case, citing concerns that children raised in a religious household would have difficulty reconciling their religious upbringing with their mother’s homosexuality, used her sexual orientation as a basis to limit her residential time and restrict her communication with her children. This is legally unsupportable and flatly contrary to scientific authority on parenting and adjustment to divorce. The trial court’s rulings cannot be justified by its stated concern that the children might have

¹ RCW 26.09.002.

difficulty adjusting to their mother's lesbian identity. Research uniformly shows that the best interests of children are promoted by maintaining close, loving relationships with the important adults in their lives. The trial court's concern with the purported "stability" of the lesbian mother betrays its discomfort with LGBT issues, and its rulings effectively punished her for leaving a heterosexual relationship. This is untenable. *Amici* offer an overview of the research in this area to assist the Court in redirecting trial courts to the proper inquiry - namely, the best interests of the children.

IDENTITY AND INTEREST OF AMICI

Amici Washington State Psychological Association ("WSPA"), Family Equality Council ("FEC"), and Parents and Friends of Lesbians and Gays Washington State Council ("PFLAG WSC") are professional, social services, and advocacy organizations committed to supporting the rights of lesbian, gay, bisexual and trans* ("LGBT") individuals and families. *Amici* have prepared this brief to provide the Court with a comprehensive and balanced review of the scientific and professional literature pertinent to the issues before this Court. *Amici* rely on the best empirical research available and have carefully evaluated the methodology of the research presented in this brief.

The WSPA has been the premier professional organization for psychologists and affiliated professionals in the State of Washington for more than 60 years, and it has more than 600 members. The main issues in this case—child development, human sexuality, and parenting—have been the subject of significant research by psychologists, including members of WSPA.

Family Equality Council is a national advocacy organization that connects, supports, and represents the three million parents in this country who are LGBT and their six million children. The FEC works extensively with the children of LGBT parents, and it submits this brief on behalf of all of the young people with whom it has worked.

PFLAG WSC, comprised of 20 chapters and 4,457 member families in the state, is the regional branch of PFLAG, the nation's largest organization for parents, families, friends, and straight allies united with people who are LGBT. PFLAG is committed to advancing equality and full societal affirmation of LGBT people through support, education, and advocacy. PFLAG WSC submits this brief as part of its commitment to supporting LGBT individuals and families in all matters, including matters of child custody and child welfare.

STATEMENT OF THE CASE

Amici adopt Ms. Black's Statement of the Case.

ARGUMENT

The trial court's rulings disrupted Rachelle Black's existing close relationships with her children and severely restricted her communication with them because of her sexual orientation. While carefully couched in terms of "values" and "stability," the trial court's obvious discomfort with Rachelle's sexuality pervades its written rulings. This undercurrent of bias directly conflicts with more than thirty years of scientific research finding that (1) a parent's sexual orientation is irrelevant to the quality of his or her parenting, (2) children's adjustment to major life changes is dictated largely by the quality of their family relationships, and (3) it is in the best interest of children to maintain existing healthy relationships with those who love them, especially during difficult life transitions.

During divorce proceedings, the legislature directs the courts to use the "best interests of the child" standard when making parenting arrangements.² The legislature "recognize[d] the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests."³ This standard reflects that "[t]he best interests of the child are served by a parenting arrangement that

² RCW 26.09.002.

³ *Id.*

best maintains a child's emotional growth, health and stability, and physical care.”⁴ “Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.”⁵ A parent's sexual orientation is irrelevant to her child's physical, mental, and emotional safety, and thus should have no bearing on the question of parenting arrangements.

1. Sexual orientation is irrelevant to a parent's ability to maintain a close, loving, and stable relationship with his or her children.

The notion that a parent's LGBT identity justifies limiting the parent's interaction with his or her children has been discredited for decades. The leading professional organizations that focus on issues of mental health and child development have publicly confirmed that an individual's sexual orientation is irrelevant to their effectiveness as a parent or to the healthy development of their children. For example, the American Psychological Association's 2004 official statement explains that

there is no scientific evidence that parenting effectiveness is related to parental sexual orientation: Lesbian and gay

⁴ *Id.*

⁵ *Id.*

parents are as likely as heterosexual parents to provide supportive and healthy environments for their children [and the] research has shown that the adjustment, development, and psychological well-being of children are unrelated to parental sexual orientation and that the children of gay and lesbian parents are as likely as those of heterosexual parents to flourish.⁶

The American Academy of Pediatrics agrees that “[s]cientific evidence affirms that children have similar developmental and emotional needs, and receive similar parenting, whether they are raised by parents of the same or different genders.”⁷ The American Psychoanalytic Association, the American Psychiatric Association, and the American Medical Association have released consistent statements concluding that there is no evidence in their respective fields that children of LGBT parents have different outcomes than those raised by heterosexual parents.⁸

⁶ Am. Psychological Ass’n., *Resolution on Sexual Orientation, Parents, and Children* (2004), available at <http://www.apa.org/about/policy/parenting.aspx>.

⁷ Am. Acad. of Pediatrics, Comm. on Psychosocial Aspects of Child and Family Health, *Policy Statement: Promoting the Well-Being of Children Whose Parents are Gay or Lesbian*, 131 PEDIATRICS (2013).

⁸ The American Psychoanalytic Association stated “[t]here is no credible evidence that shows that a parent’s sexual orientation or gender identity will adversely affect the development of the child.” Am. Psychoanalytic Ass’n, *Position Statement: Parenting* (2012), available at <http://www.apsa.org/sites/default/files/2012%20%20Position%20Statement%20on%20Parenting.pdf>. The American Psychiatric Association released a similar official position statement, observing “no research has shown that the children raised by lesbians and gay men are less well adjusted than those reared within heterosexual relationships.” Am. Psychiatric Ass’n, *Position Statement: Support of Legal Recognition of*

These official statements are based firmly on the overwhelming body of research that confirms that a parent's sexual orientation "has no measurable effect on the quality of parent-child relationships or on children's mental health or social adjustment."⁹ A recent commentator concluded:

The research on lesbian and gay parents strongly indicates that they are no less equipped to raise children than their heterosexual counterparts. They possess the skills necessary to be good parents, and they enjoy healthy relationships with their children. They care deeply about protecting their children from harm while also preparing them for potential stigma.¹⁰

Rather than the sexual orientation of their parents, the most significant determinant of children's wellbeing is the quality of the relationships with

Same-Sex Civil Marriage (2005). The American Medical Association formally adopted a policy supporting legislative and other reforms to allow adoption by same-sex partners. See Am. Med. Ass'n, *Policy H-60.940, Partner Co-Adoption*, available at <http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glb-t-advisory-committee/ama-policy-regarding-sexual-orientation.page?>.

⁹ Judith Stacey & Timothy J. Biblarz, (*How*) *Does the Sexual Orientation of Parents Matter?*, 66 AM. SOCIOLOGICAL REV. 159 (2001); see also Jennifer L. Wainright & Charlotte J. Patterson, *Peer Relations Among Adolescents With Female Same-Sex Parents*, 44 DEVELOPMENTAL PSYCHOLOGY 117 (2008); Jennifer L. Wainright & Charlotte J. Patterson, *Delinquency, Victimization, and Substance Use Among Adolescents With Female Same-Sex Parents*, 20 J. FAM. PSYCHOLOGY 526 (2006); Jennifer L. Wainright et al., *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents With Same-Sex Parents*, 75 CHILD DEV. 1886 (2004).

¹⁰ ABBIE GOLDBERG, *LESBIAN AND GAY PARENTS AND THEIR CHILDREN* 120 (2010).

and between the important adults in their lives.¹¹ Indeed, “[i]t is what happens within families, not the way families are composed, that seems to matter most.”¹²

In the context of divorce, promoting the quality of existing healthy parent-child relationships should be the touchstone for the trial court’s mandate to promote the best interests of the children. The trial court’s rulings here were directly contrary to those interests because of their undue focus on Rachelle’s sexual orientation. Although the trial court’s ruling is couched in neutral sounding language, the fact that it references Rachelle’s sexual orientation more than a dozen times in a four-page decision is by itself an indication that it was fundamental to the court’s decision. Likewise, the court noted that, until Rachelle came out as a

¹¹ SUSAN GOLOMBOK, *PARENTING: WHAT REALLY COUNTS?* 99, 104 (2000) (“It is no longer appropriate to assume that traditional families are good and non-traditional families bad for children. What matters most for children’s psychological well-being is not family type - it is the quality of family life.”); *see also* Michael E. Lamb, *Mothers, Fathers, Families and Circumstances: Factors Affecting Children’s Adjustment*, 16 *APPLIED DEVELOPMENTAL SCI.* 98 (2012) (“Dimensions of family structure - including such factors as divorce, single parenthood, and the parents’ sexual orientation - and biological relatedness between parents and children are of little or no predictive importance once the process variables are taken into account[.]”).

¹² GOLOMBOK, *supra* note 11 at 101 (“Whether children are raised by one parent or two, whether or not a father is present in the home, whether the child is genetically unrelated to one or both parents, and whether the parents are homosexual or heterosexual, makes little difference to children’s emotional well-being.”).

lesbian, she and her former husband “shared the same religious views and values.” Yet, by the time of the parenting plan, it was “clear” that Mr. Black was “the more stable parent” in large part because he could “maintain” the children’s fundamentalist religious views (and presumably their “values”).¹³ Despite the attempt to frame its decision in terms of the father’s superior “stability,” the trial court’s reasoning reveals its erroneous baseline assumptions about LGBT parents.

2. Children’s best interests are served by allowing their parents to maintain existing close, loving, and stable relationships with them during difficult life transitions.

Indisputably, many children experience difficulty when their parents divorce, but the trial court’s attempt to shield the Black children from their changing family circumstances in this case cannot be justified. To the contrary, research demonstrates the factor with the most significant impact on the healthy adjustment of children of divorcing parents is the quality of the parent-child relationships.¹⁴

The trial court appeared primarily concerned that Rachelle’s children would be upset by her sexual identity and new relationship. Specifically, the court noted that the “children have been taught from the

¹³ Record on Appeal at 40-41.

¹⁴ Charlotte J. Patterson, & Paul D. Hastings, *Socialization in the Context of Family Diversity*, in HANDBOOK OF SOCIALIZATION: THEORY AND RESEARCH 328-51 (Joan E. Grusec & Paul D. Hastings eds., 2007).

Bible since age 4. [The Court believes] it will be very challenging for them to reconcile their religious upbringing with the changes occurring within their family over issues involving marriage and dissolution, as well as homosexuality.”¹⁵ In contrast, the trial court found that Rachele’s husband demonstrated “stability” in his parenting, but this conclusion was plainly driven by the assumption that his sexual orientation would not upset his children.¹⁶ The assumption that children should be shielded from a difficult conversation by reducing their contact with their primary caregiver is not supported by science or statute. Such assumptions are impermissible bases for parenting plan decisions, and in any event are flatly contrary to scientific authority on children’s adjustment.

Critical reviews and direct research on the outcomes of children raised in lesbian-parented families worldwide demonstrate that children’s psychosocial adjustment and intellectual development is influenced more by family processes, such as conflict between parents, than by family structure, such as the number of parents or their sexual orientation.¹⁷

¹⁵ Record on Appeal at 40-41.

¹⁶ *Id.* at 41.

¹⁷ Amaryll Perlesz et al., *Family in Transition: Parents, Children and Grandparents in Lesbian Families Give Meaning to ‘Doing Family’*, 28 JOURNAL OF FAMILY THERAPY 175, 177 (2006). See also Nanette Gartrell et al., *The National Longitudinal Lesbian Family Study: 10-year-old Interviews*, Am. Public Health Assoc, Annual Conf. (2000); GOLOMBOK, supra note 11; Norman Anderssen et al., *Outcomes for Children With*

Because times of family transition and conflict between parents can be difficult for children, it is all the more critical for parents to be able to maintain as much consistency as possible in their loving relationships with their children after divorce. Indeed, the quality of the relationship between parent and child is so fundamental to a child's wellbeing that research supports its prominence as the central factor in the development of parenting plans.¹⁸

The trial court's apparent concern that Rachele's children would be unable to adjust to her new relationship is contrary to the research in this area. The adjustment of children of divorced parents does not depend upon whether a parent subsequently enters into a same-sex or heterosexual relationship. Many studies comparing same-sex and heterosexual stepfamilies have concluded that the difficulties faced by children in lesbian-parent families after heterosexual divorce are "similar to those faced by other children of separated or divorced heterosexual parents who

Lesbian or Gay Parents. A Review of Studies From 1998-2000, 43 SCANDINAVIAN JOURNAL OF PSYCHOLOGY 335 (2002); Susan Golombok et al., *Children with Lesbian Parents: A Community Study*, 39 DEVELOPMENTAL PSYCHOLOGY 20 (2003).

¹⁸ Wainright & Patterson, *supra* note 9 ("In the absence of joint physical custody, regular contact with nonresident parents seems to have positive effects, under most conditions (e.g., a cordial relationship between ex-spouses).").

had begun new sexual relationships.”¹⁹ Indeed, studies demonstrate that children raised by lesbian parents post-divorce “showed no more evidence of psychological distress than population norms, generally had good relationships with their peers, displayed typical gender development patterns, and later most identified as heterosexual young adults.”²⁰

Research overwhelmingly supports that the best interests of children experiencing divorce are promoted by the development of parenting plans that encourage and support the maintenance of close, loving, and stable parent-child relationships, regardless of the parent’s sexual orientation. Here, the trial court repeatedly affirmed the quality and strength of Rachelle’s relationship with her children but failed to recognize that interfering with that relationship would adversely impact the children’s ability to adjust to their changing family. Rachelle’s lesbian identity is irrelevant to her loving bond with her children, and their relationship should not have been judicially limited.

¹⁹ Fiona Tasker, *Lesbian and Gay Parenting Post-Heterosexual Divorce and Separation*, in *LGBT PARENTED FAMILIES: POSSIBILITIES FOR NEW RESEARCH AND IMPLICATIONS FOR PRACTICE* 4, 16 (Abbie Goldberg & Katherine Allen eds., 2015).

²⁰ *Id.*

3. Open communication, without restriction, is an essential component of close, loving, and stable relationships.

The trial court's rulings regarding Rachelle's ability to talk to her children about her sexual orientation and new relationship cannot be excused as a modest intrusion on the parent-child relationship. Open communication is an essential component of close, loving and stable relationships. The trial court not only failed to encourage open communication but actively restricted it, based on purported concerns that the children would have difficulty adjusting to Rachelle's identity as a lesbian. This decision is contrary to the well-established research on the adjustment of children.

Decades of scientific research demonstrate that open communication helps children understand and adjust to new information, especially during difficult life transitions. "Establishing a home environment that encourage[s] open communication about diversity and discrimination may . . . set the stage for processing feelings about other life challenges, such as the [parents'] relationship dissolution."²¹ Open and honest communication between parents and children following a life

²¹ Nanette Gartrell et al., *Family Characteristics, Custody Arrangements, and Adolescent Psychological Well-Being After Lesbian Mothers Break Up*, 60 FAMILY RELATIONS 572, 581 (2011).

transition promotes secure attachment and aids in the positive adjustment of children.²²

Many studies have found open communication to be of particular importance when children are adjusting to new information about a parent's sexual orientation. Children in this situation have reported struggling most with the secrecy surrounding their parents' LGBT identity; they reported improved relationships with their parents after having an open conversation.²³ Children may have questions about how to manage heterosexism and homophobia as they adjust to their new family structure.²⁴ Experts in the field advise parents to engage in "honest and empathetic communication" about their sexual orientation with their children to help their children understand and adjust.²⁵ Through open

²² GOLOMBOK, *supra* note 11 at 101-02 ("Children who become securely attached feel better about themselves, and have better relationships with others, than those who develop insecure attachment relationships. And it is the quality of relationships between children and their parents, particularly how sensitive and responsive their parents are to them, that is the key factor in whether a child will become securely attached.")

²³ Megan C. Lytle et al., *Adult Children of Gay and Lesbian Parents: Religion and the Parent-Child Relationship*, 41(4) JOURNAL OF COUNSELING PSYCHOLOGY 530 (2013).

²⁴ Saralie Pennington, *Children of Lesbian Mothers*, in GAY AND LESBIAN PARENTS 58 (F.W. Bozett ed., 1987); Tasker, *supra* note 19.

²⁵ GOLDBERG, *supra* note 10 at 148 ("Parents who foster honest and empathetic communication with their children about their sexual orientation and who locate the source of the children's perceived 'problem' in societal heterosexism and homophobia (rather than in their own nonheterosexual orientation) can help their children to accept and

communication, parents can help children understand their own feelings, and can ultimately “facilitate resilience in the face of stigma and heterosexist discrimination.”²⁶ In this way, open communication can not only aid in adjustment but also provide an opportunity for personal growth.²⁷

Open communication to facilitate positive adjustment and personal growth is particularly important when children have been raised in a religious environment that stigmatizes LGBT individuals. As one study concluded:

[While] religious stigma may introduce stress into the relationship . . . these issues can be resolved. Rather than dichotomously choosing between religion and their family, [children can redefine] their religious beliefs to integrate their religion and their family.²⁸

Through open communication, the parent can construct their sexual orientation “as normal and healthy, but at the same time [prepare] them [for] the stigma attached to these identities, thereby helping them to prepare for the questions that they may ultimately face from peers,

perhaps even embrace the changes that follow a parent’s coming out.”).

²⁶ *Id.* at 122 (“Children may struggle with reconciling the fact of their parents’ homosexuality with the negative attitudes they have internalized, or are at least aware of, by virtue of living in a heterosexist society.”); *see also* Gartell et al., *supra* note 21.

²⁷ GOLDBERG, *supra* note 10.

²⁸ Lytle et al., *supra* note 23.

teachers, and neighbors.”²⁹ This pro-communication approach, with open lines for dialogue, aids in the successful and positive incorporation of new information into a child’s life.

All divorces raise unique concerns. Courts may not assume that a divorce where one parent is LGBT is more stressful than any other divorce or warrants special communication restrictions or reduced residential time with the LGBT parent. As one commentator concluded:

Although a parent’s coming out may be met with surprise, worry, and concerns about privacy from their children, this fact by itself should not be taken to suggest that (a) lesbians and gay men are placing an unfair burden on their children by coming out; (b) parents should avoid or delay their coming out in order to spare their children distress; or (c) children are destined to experience considerable and ongoing stress about their parent coming out.³⁰

Numerous studies have demonstrated that the bulk of distress experienced by children in this situation is due to the separation of parents, not the parent’s LGBT status.³¹

²⁹ GOLDBERG, *supra* note 10 at 160-61.

³⁰ *Id.* at 148 (2010).

³¹ Kelley Hall & Gay Kitson, *Lesbian Stepfamilies: An Even More “Incomplete Institution,”* 4 JOURNAL OF LESBIAN STUDIES 31 (1978) (Study on gay fatherhood concluded “any distress or problems their children had were more connected to parental separation or divorce than adjusting to having a gay parent.”); Karen Lewis, *Children of Lesbians: Their Point of View,* 25 SOCIAL WORK 198 (1980) (Studies demonstrate that difficulties children experience in accepting their mother’s sexual identity or new female partner are “linked to resolving their feelings about the ending of their mother’s and father’s relationship.”)

The trial court's residential time limitations and communication restrictions are further detrimental to the Black children's wellbeing because they stigmatize Rachelle and encourage conflict, not communication, between their parents. In a divorce where one parent is LGBT, the reaction of the heterosexual parent can significantly impact children's adjustment and the children's relationship with both parents.³² A study of young adult and adult children of gay and lesbian parents found that "perceived social support from family members" was important to their strength and resilience, and ultimately aided in their adjustment.³³ Conversely, a parenting arrangement that stigmatizes the LGBT parent and judicially validates and perpetuates the heterosexual parent's homonegative views will hinder the children's adjustment and enflame any existing conflict between the parents. Studies have consistently found that children have the most difficulty adjusting when they witness, or are the subject of, parental conflict.³⁴ A trial court should therefore adopt a parenting plan that demonstrates respect for both parents and minimizes, rather than encourages, conflict between them.

Here, the trial court's parenting plan impedes the adjustment of the children by stigmatizing the lesbian parent and perpetuating homophobia

³² Lytle et al., *supra* note 23.

³³ GOLDBERG, *supra* note 10 at 161.

³⁴ GOLOMBOK, *supra* note 11 at 75.

through improper residential time and speech restrictions. Removing the restrictions will facilitate open communication between Rachelle and the children. Rachelle can draw upon her existing relationships with her children to provide the support they need to understand and adjust to their new family structure.

CONCLUSION

Parental divorce is a turning point in the life of a child. It can be an experience that preserves familial bonds and encourages growth and development, or it can be riddled with conflict, erosion of central relationships, and confusion. The judicial system has a mandate to act in the best interest of the child. Research demonstrates that it is in children's best interests for courts to preserve strong parent-child relationships, encourage open communication, and minimize parental conflict. In this case, however, the trial court impermissibly relied on stereotypes and morally driven arguments to enact a parenting plan that hinders Rachelle's bond with her children and severely restricts her open communication with them. For these reasons, *Amici* urge this Court to vacate the residential time and speech restrictions in the final parenting plan.

RESPECTFULLY SUBMITTED on May 1, 2015.

K&L GATES LLP

By /s/ Laura K. Clinton

Laura K. Clinton, WSBA # 29846

Alanna Peterson, WSBA # 46502

Kendra Nickel-Nguy, WSBA # 45520

925 Fourth Avenue, Ste. 2900

Seattle, WA 98104-1158

(206) 623-7580

laura.clinton@klgates.com

alanna.peterson@klgates.com

kendra.nickel-nguy@klgates.com

Attorneys for *Amici* WSPA, FEC, and
PFLAG WSC