

## **Amicus Curiae Briefs Family Law Issues**

### **Custody/ Visitation**

**Case:** *Ireland v. Ireland*

**Court:** The Supreme Court of Connecticut, 1998

**Amicus Brief:** Connecticut Women's Education and Legal Fund

**Case:** The child's primary custodial parent desired to relocate to California where her new husband had obtained employment. She appealed from a trial court's ruling prohibiting her from doing so after failing to prove that the move was in the child's best interests.

**Amicus Brief:** The brief argues that any limit on a primary custodial parent's ability to relocate has a disparate impact on women since women represent the majority of custodial parents in Connecticut. Most decisions to relocate are premised on career opportunities and financial advancement that are necessary to bring women into the mainstream of society and create economic parity with men. Thus, there is great concern that any hindrance to a mother's ability to move freely while maintaining her role as primary parent will further exacerbate the economic disadvantage that inevitably follow divorce.

**Holding:** The Court adopted a test with shifting burdens to be used in determining if relocation is appropriate in any given case. The custodial parent wishing to relocate must first show by a preponderance of the evidence that the move is for a legitimate purpose and that the proposed location is reasonable in light of that purpose. If the purpose is legitimate and the location is reasonable, the non-custodial parent must prove by a preponderance of the evidence that the move is not in the child's best interests in order for a trial court to prohibit the relocation.

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**Case:** *State of Connecticut v. Anthony Vakilzaden*

**Court:** Connecticut Supreme Court, 1999

**Amicus Brief:** Connecticut Women's Education and Legal Fund

**Case:** The State appealed following a trial court's dismissal of information charging the defendant, Anthony Vakilzaden, with the crime of custodial interference. The defendant assisted his nephew in abducting the nephew's daughter from the custody of her mother and in assisting the nephew in fleeing the country. The trial court dismissed the information because the State had not shown that the mother was the sole custodian at the time the defendant's nephew fled the country.

**Amicus Brief:** The brief expresses concern that a reversal of the decision might inhibit women who flee from their homes to protect their children from abuse. The brief argues that the State's construction of the custodial interference statute will, in many cases, eliminate from consideration the criminal intent element of the statute, for the State focuses solely on the parent's intent to hold the child for a protracted period of time. The State's construction makes no mention of the parent's knowledge that s/he had no legal right to interfere with the rights of

the child's lawful custodian. The brief argues that by ignoring this knowledge requirement, the State places in jeopardy some of the very people it should seek to protect, such as the abused woman who flees from her abuser with their children in order to protect both herself and their children from further abuse.

**Holding:** The Connecticut Supreme Court reversed its 1993 decision in *Marshak v. Marshak*, which had limited the applicability of the crime of custodial interference to non-custodial parents. The Court held that third parties that assist a parent in kidnapping his/her child could be prosecuted even where the parents have joint custody. The Court found CWEALF's hypothetical abused woman to be an example of someone who could not be prosecuted for custodial interference so long as she then filed for emergency custody orders from a trial court. In this hypothetical, the woman would lack the knowledge element, for she would believe correctly that she had a duty to protect her children from abuse.

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**Case:** *Troxel v. Granville*

**Court:** Supreme Court of the United States, 1999

**Amicus Brief:** Northwest Women's Law Center

**Case:** The Washington State Supreme Court held that a state statute allowing any person the right to petition for visitation with a child at any time violated the constitutionally protected rights of parents to raise their children free from governmental intrusion. The case involved grandparents who wanted visitation, despite their daughter-in-law's objection to their visitation with the child.

**Amicus Brief:** The brief acknowledges the importance of parental autonomy to ensure that parents can decide how to raise their children free from governmental interference. The brief states that the Washington Supreme Court properly concluded that the third-party visitation statute is unconstitutional and its breadth allows for gender bias to permeate court-ordered visitation when the custodial parent objecting to the visitation is a woman. The brief argues that the statute would be constitutional if applied in limited cases involving de facto parents and a proper application of the "best interests of the child" standard.

**CWEALF:** CWEALF joined the brief because of its long history of work on and advocacy of family law issues and the importance of parents, especially women, to make decisions about their families. CWEALF also believed that this case if decided too broadly could have a negative impact on those families comprised of same-sex parents, one of whom lacks recognized parental rights.

**Holding:** The Supreme Court affirmed the Washington State decision and held that the third-party visitation statute was unconstitutional. However, the Court declined to follow the Washington Supreme Court in holding that every non-parental visitation statute require a showing of harm or potential harm in order to permit non-parental visitation.

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**Case:** *T.B. v. L.R.M.*

**Court:** Supreme Court of Pennsylvania, 2001

**Amicus Brief:** Women's Law Project

**Case:** T.B., a Pennsylvania woman, was denied access to the child she helped raise. T.B. brought suit seeking partial custody for purposes of visitation with the child she raised for three years together with her former partner L.R.M., the child's biological mother. The trial court granted T.B. partial custody for the purposes of limited visitation, ruling that she had standing to seek visitation by virtue of her in loco parentis status with respect to the child and because visitation was in the child's best interest. On appeal the Superior Court ruled that T.B. had standing to seek custody and held that same-sex partners of lesbian and gay parents can establish a parental relationship with a child they are helping to raise that is strong enough to entitle them to standing to sue for partial custody. L.R.M. appealed and the Supreme Court granted a hearing to review the doctrine of in loco parentis as it applies to same-sex custody disputes.

**Amicus Brief:** The brief argues against depriving the children of lesbian and gay co-parents the benefits of continued custody or visitation based solely on the sexual orientation of the non-legal parent. The brief also discusses research, establishing that the children of lesbian and gay parents are as well adjusted, healthy, loved and cared for as the children of heterosexual parents.

**CWEALF:** CWEALF has been involved with numerous briefs in support of LGBT families, specifically those focusing on co-parent adoption. CWEALF believes that where the State has chosen not to provide a mechanism for legally recognizing the parent-child relationship, the State should still protect that relationship, and the child involved, in the event the relationship between the two parents dissolves.

**Holding:** The Pennsylvania Supreme Court held that non-biological lesbian parents could seek visitation when they function as parents. The Court then granted T.B. visitation despite L.R.M.'s protests because of the doctrine of in loco parentis—which protects T.B.'s parental relationship with her daughter.