

## BONDING IS A VITAL ISSUE APPELLATE COURTS AGREE

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Bonding has too often been loosely defined. Mental health professionals, in their reports, have been vague and fuzzy, offering opinion rather than data, generalizations rather than facts. As a result, courts and case managers may not have given bonding the critical consideration it deserves.

Bonding must be practically defined in ways the court can accept and understand. The dictionary defines a bond as “a unique relationship between two people enduring for long periods, even a lifetime.” The authors amplify this definition:

*“Bonding is a significant reciprocal attachment which both parties want and expect to continue, and which is interrupted or terminated at considerable peril to the parties involved.”*

Bonding can be specifically defined in four concrete and evidentiary ways, any one of which is sufficient to indicate its presence: 1. Time in place. 2. The behavior of the child. 3. Reciprocal attachment. 4. Family identification.

### Time in Place

Humans bond by sharing important events in daily life, such as eating, sleeping, and playing with each other. Time spent together is one factual way to measure bonding. In a parent-child setting, bonding is likely after *three months*. Research indicates that this is the length of time that normal human beings take to adjust to new and/or difficult situations. This three-month period is reflected in folk wisdom (the grieving time following a death), the probationary period when starting a new job, and in the description of many psychiatric disorders (the time allowed to “adjust” before an illness is diagnosed.) (DSM-IV-TR) In other words people usually take up to three months to adapt to a new situation.

Bonding is probable after *six months*. Normal children will adjust and attach well within this period. Indiana regulations for selecting an adoptive home recognize this fact. The Indiana Child Welfare Manual (805.12) recommends that preference for adoption be given to foster parents who have had the child in their home for six months or more.

Bonding is almost certain after *one year*, unless one is dealing with an unbonded (psychopathic) child. These children are incapable of bonding with anyone. Even in the case of an unbonded child, the court may recognize the willingness of the prospective home to make a permanent adoptive commitment to the child. One year is a long time in the life of a child. For this reason, the Adoption and Safe Families Act (ASFA Summary) has attempted to set a limit on the time a child can be kept in temporary care. “A petition to terminate parental rights shall be filed for parents whose child has been in foster care for 15 of the last 22 months....” ASFA

recognizes that it is harmful and even abusive to move a child who has been with a family for one year or more.

### The Behavior of the Child

Bonding can be assessed by observing and documenting the behavior of the child. Interest and attentiveness, dependency, pleasure and joy, calmness, assertiveness, appropriate protest and anger, eye contact, copying mannerisms, staying close, etc. With children over three: self-limit-setting and empathy (Belsky et al, 1988). Checklists such as the Randolph Attachment Disorder Questionnaire, Keck's list of Attachment Symptoms, and the Indiana Bonding and Attachment Checklist can be used to record behavioral evidence of bonding.

### Reciprocal Attachment

Bonding flows both ways. A third way to measure bonding is to evaluate the promise expressed by the actual or potential parent. How well do they know the child? How strong is the promise they are willing to make? The potential adoptive parents can be asked to explain the depth of their commitment. The court should consider the quality of the commitment to permanence.

*"I want you for my forever child. I will always be there for you. As long as I live. Even after you are 18. You will never be 'emancipated' from my concern. When life hits you hard and you need a place to go. When you need money. When you go through a divorce. Or a death. My home is now your home. And when I die, you will have an inheritance."*

### Family Identification

Many state child welfare departments have definitions of bonding that consider how the relationship is viewed by the rest of the community. The Indiana Child Welfare Manual (805.12) lists three criteria for demonstrating a bond: "(a) The child identifies as a member of the family, and the family considers the child to be a family member. (b) The child is perceived to be a member of the family and is treated as such by the community, e.g. school, friends, neighbors, or extended family members. (c) The child has developed reliance upon and trust in the family, while in their care."

### Bonding Outweighs Kinship

What determines a relationship? A relative is someone to whom you are related. There are many ways to relate or be related. Biological parents pass on their genes. Parents-in-place (de facto parents) pass on their culture and habits. Both are enduring.

Children form significant attachments to adults who meet their physical and emotional needs, regardless of any biological connection. This bonding outweighs biological kinship, not because the biological parents may not have certain "rights," but because these rights are

superceded by the serious harm that can result from moving a bonded child. As ASFA says repeatedly, the child's rights are paramount.

The marriage bond is one example of a non-blood tie that is both significant and enduring. The relationship of husband and wife is an emotional bond amplified by a legal commitment. As such, it takes precedence over the spouses' biological relationship to their parents. Jesus commented on the precedence of the marital bond over that with the birth family: "...A man must leave father and mother and cling to his wife...." (Matthew, 19:5)

### Interrupted Bonding

Bonded relationships are critical in child development. When a bonded relationship is threatened or severed, trauma results. Bowlby (1979) speaks eloquently of the resultant danger of losing the capacity for intimacy:

"Many of the most intense of all human emotions arise during the formation, the maintenance, the disruption, and the renewal of affectional bonds...in terms of subjective experience, the formation of a bond is described as falling in love, maintaining a bond as loving someone, and losing a partner as grieving over someone. Similarly, threat of loss arouses anxiety and actual loss causes sorrow; whilst both situations are likely to arouse anger. Finally, the unchallenged maintenance of a bond is experienced as a source of security, and the renewal of a bond as a source of joy."

What is the cost of severing bonded relationships? Interrupted bonding takes a heavy toll on human health and well-being. It is as serious as divorce, brain surgery, or death. The younger the child and the deeper the bond, the more devastating will be the impact. The price tag is high, either immediately or later in adult life.

Interrupted bonding commonly contributes to or causes some of the following psychiatric disorders in children: Reactive Attachment Disorder, Oppositional Defiant Disorder, Attention Deficit Disorder (AD/HD), Adjustment Disorders, Developmental Delay, and Learning Disorders. (DSM-IV-TR)

Interrupted bonding may also lead to later and more serious adult disorders. Separation and loss are critical life events for a child, but the traumatic reaction may be suppressed and delayed, only to emerge in adult pathology as homelessness, poverty, mental illness, and criminal activity. A case of pay me now or pay me later.

Over fifty percent of homeless persons in New York and Massachusetts were once foster children. Children emancipated without a permanent home are not only more likely to be homeless, but also poor. They have no financial support from a family and no inheritance to anticipate.

Schizophrenia, Depression, Anxiety Disorders, and other serious mental disorders have been significantly correlated with the loss of a significant attachment earlier in life.

Multiply-placed and moved children are “psychopaths in the making.” The unbonded child may become a “cold-blooded” adult who lacks compassion and empathy. Crimes without conscience are a common result.

### Appellate Courts Continue to Choose Bonding

Fortunately, courts are recognizing the importance of bonding and attachment when considering placement decisions. The courts have used terms like “continuity of care” and “risks of transition” when describing the importance of attachment and keeping children in bonded relationships. Here are ten recent appellate court decisions from across the country:

#### **Missouri**

The Missouri Appellate Court upheld a ruling in favor of foster parents adopting their foster child over the objections of the child’s grandparents and their Indian tribe. The child had multiple medical needs that required special medical equipment and training on its use. The foster parents became very adept at providing for the child’s medical needs and a strong bond developed. Although there is a statutory preference for the child to be placed with a member of his family and tribe, the court reasoned that his foster parents’ ability to provide care for his special needs and the significant emotional bond between them overrode the statutory preference. (In re C.G.L. v. McDonald County Juvenile Office, 63 S.W. 3d 693) (2002)

#### **Kansas**

The Kansas Appellate Court ruled that a lower court erred, in part, when it discounted an emotional bond between a foster child and her foster parents, which is one factor in the best interests of child. The child was placed with a foster family by the custodial agency and the agency failed to pursue adoptive placement with interested relatives. The foster family and the child’s relatives both filed to adopt. The lower court had ruled that the agency initially failed in their reasonable efforts to explore adoptive placement with the relatives and, therefore, the court ruled in favor of placement with relatives. The Appellate Court affirmed the lower court ruling that the agency failed in its reasonable efforts; however, the court reversed placement with the relatives until consideration could be given to the emotional bond between the child and her foster parents in determining her best interests. (In the Interest of D.C., 32 Kan. App. 2d 962) (2004)

In a separate case, the Kansas Appellate Court ruled a lower court erred when it granted an adoption by grandparents based solely on biological preference when the foster family had more of a relationship with the child. The child had resided with his foster family for over two years when the competing petitions were filed. The court reasoned that the bond between the foster family and the child is a critical factor when determining the child’s best interest. (In re Interest of J.A., 42 P. 3d 215) (2002)

#### **Washington**

The Washington Appellate Court affirmed a lower court that denied biological parents' preference to have a couple other than the family the children had been placed with to adopt. The court reasoned that the best interest of the child was to remain in the placement where he was thriving, not to undergo the *risk of a transition*. The record showed that the custodial family was prepared to adopt the child. They were experienced parents of three children. The child was observed to be happy and healthy in their care and was accepted by all members of their family. At the time of the trial court's decision, the child had lived with the family for 14 of his 19 months. The trial court did not abuse its discretion by concluding that the custodial unit was the family to whom the child bonded and that he should have remained in their care. Relevant discussion as to how a court should consider placement decisions was included in the opinion.

“Evidence relevant to an adoptive placement decision may include, but is not limited to, the psychological and emotional bonds between the dependent child and its biological parents, its siblings, and its foster family; the potential harm the child may suffer if severed from contact with these persons as a result of a placement decision; the nature of the child's attachment to the person or persons constituting the proposed placement; and the effect of an abrupt and substantial change in the child's environment. An important objective is to maintain continuity in the child's relationship with a parental figure, and to avoid numerous changes in custody if this is possible without harm to the child. Where possible, the initial placement shall be viewed as the only placement for the child.” (p. 13) (In re Dependency of J.S., 111 Wn. App. 796) (2002)

## **California**

The California Appellate Court upheld a ruling in favor of continuing placement with foster parents over placement with the children's tribe. In spite of the preference for Indian children to be placed with their tribe according to the Indian Child Welfare Act, the court ruled in favor of continued placement with the children's foster parents due to their significant attachment. The court reasoned that this extraordinary emotional bond falls under the “good cause” exception to the Act. (Fresno County Dept. of Children & Family Services v. Sup..., 122 Cal. App. 4th 626) (2004)

## **Pennsylvania**

The Pennsylvania Supreme Court ruled in favor of foster parents adopting their foster child over placement with the biological grandparents. The child was “failure to thrive” when she entered foster care and made dramatic gains while with the foster parents. The court reasoned that the risks in moving the child from the foster home where she was secure and attached were too great. (In the Interest of C.J.R., 782 A. 2d 568)(2001)

## **Maine**

Maine's Supreme Court upheld a lower court ruling that gave adoptive placement to the foster parents over the child's grandparents. The child had lived with the foster parents for two years while the grandparents had visited infrequently. The child had many developmental delays and the foster parents had a track record of meeting her needs. The court reasoned that

significant bonding occurred between the child and her foster parents, and it was in her best interest to remain with them. (In re Annie A., 2001 ME 105; *similarly* In re Kayla M., 2001 ME 166) (2001)

## **Alaska**

The Alaska Supreme Court ruled for a grant of adoption of a foster child by his foster parents, while denying the biological grandparents' petition. The child had continuously resided with his foster parents from the age of seven months to three years. Although the child had a relationship with his grandparents, the court reasoned it's in the child's best interests to be adopted by his foster parents due to the significant bond with them and recognizing the child's need for "continuity of care." (In re Adoption of Bernard A., 77 P. 3d 4) (2003)

## **Tennessee**

The Tennessee Appellate Court ruled in favor of foster parents' adoption petition over that of the child's relatives - even though it permanently separated siblings. Siblings were initially placed together in the foster home, when the youngest, a four month old, was then placed in the custody of relatives while the older one remained in the foster home. This arrangement had continued for nearly two years when the competing adoption petitions were filed. The court granted the foster parents' adoption petition of the older child thereby dismissing the relatives' petition. The relatives were able to adopt the younger child. The court reasoned that the continuity of care preference outweighed the preference for placing siblings together due to the age of the children and their respective attachment to their caregivers. (In re S.B., Tenn. App. LEXIS 308) (2000)

## **Indiana**

The Indiana Court of Appeals recognized the importance of parenting and bonding when it comes to adoption. The Appellate Court held that biology is not more important than a child's relationship with a man who has been a father in the terms that matter most. The court upheld the adoption of a girl to a man who had cared for her as his daughter for five years while dismissing the biological aunt and uncle's adoption petition. (Gerweck v. Schoenrad, 793 N.E. 2d 1054) (2003)

## **Summary**

More courts at all levels are recognizing the importance of bonding when making placement decisions. This consideration, however, remains far from universal. Many courts still fail to consider the documented bond between the foster parent and foster child and choose adoptive placement with a long lost relative, relying solely on the primacy of biological rights. Thanks to the Adoption and Safe Families Act (ASFA), the rights of the child are (or should be) considered paramount.

Hopefully, with increased understanding of child development and bonding, and a growing number of these appellate court decisions, judges will give bonding appropriate consideration in placement decisions.

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