



**Children's Rights and the Maintenance of
Attachment Relationships in
Custody Decision Making**

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Focus of the Research

- Concerned with custody disputes between biological and nonbiological parents

Guiding Assumption

- The preservation of children's psychological attachments, whether to biological or nonbiological parents, is a meaningful research and policy goal



Previous Research

- *Legal recognition of broad social definitions of the family:* judges are urged to define family relationships broadly and to make decisions in accordance with such definitions
- *Legal recognition of children's rights:* judges are urged to accept children as rights bearers and to make decisions that account for the “relationship rights” that children possess



Previous Research

- 2006 study of Iowa
 - A judicial focus on children's rights was more likely to protect children's attachment relationships

- Arguments based on family definitions yielded unexpected and unpredictable results



Current Research

- This research replicates the Iowa study but with a broader sample
 - 37 cases from 14 states and the District of Columbia (see handout)



A Focus on the Child's Interests/Rights

In the Interest of ELMC (Colorado 2004):
“a child has a statutory *right* to have parental responsibilities allocated in its best interests”

Callahan v. Davis (Mississippi 2004):
the grandparents “had provided the child a stable, secure and nurturing environment in which [she] appeared to be thriving,”



A Focus on the Child's Interests/Rights

RDT v. FAJ (Tennessee 2004)

“it would be highly disruptive to [the child's] development to take her out of the home she is in,” thereby exposing her to much “emotional chaos” and the potential for significant “adverse effect[s] upon [her] emotional, psychological, and mental condition”

Radka v. McFall (Ohio 2004)

“these children deserve to be raised in a home where they can receive the basic things needed by every child”



A Focus on Family Definitions

- Largely absent in these cases
- Most cases involved disputes between biological parents and other relatives
- reliance on definitions of the family may not be the most apt way to protect children's attachment relationships



Policy Implications

- Findings support the conclusions of the Iowa study
- It is through a focus on children's interests or rights that the preservation of children's attachment relationships will be most common
- Efforts to promote legal change should therefore focus on children as rights bearers