

In the Supreme Court of the United States



JANET K. ADKINS,

Petitioner,

—v—

JAMES S. ADKINS,

Respondent.

On Petition for Writ of Certiorari to the
Michigan Supreme Court

**MOTION FOR LEAVE TO FILE AND
BRIEF OF AMICI CURIAE SAFE KIDS
INTERNATIONAL, CALIFORNIA PROTECTIVE
PARENTS ASSOCIATION, JUSTICE FOR
CHILDREN, AND MICHIGAN NATIONAL
ORGANIZATION FOR WOMEN (NOW) ON
BEHALF OF PETITIONER JANET K. ADKINS**

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JANUARY 25, 2016

MOTION FOR LEAVE TO FILE AMICI BRIEF

Pursuant to Rules 33.1 and 37, Amici seek an order permitting them to file their brief in support of Petitioner Janet Adkins' Petition for Writ of Certiorari. Amici are non-profit organizations or individuals specializing in appellate advocacy, legislative development, and training and education on behalf of mothers, including women who are victims of domestic violence and children.

In working to eliminate gender discrimination in the courts, domestic violence and promote safe family environments for battered mothers and children alike, Amici are concerned about the change of custody in an ex-parte proceeding after a judgment had been entered in which both parents shared custody.

Amici are providing empirical evidence in this amici brief showing that the issue of denial of "continuum of liberty" by taking custody from a "good enough" parent in an ex-parte proceeding without notice and evidence happens too often to mothers. In particular, it happens to mothers who are protective parents seeking protection for their abused children and/or are domestic violence victims themselves.

These organizations exist because family courts routinely take custody from good enough mothers, particularly those trying to protect themselves and their children from abuse and violence.

Attorney Barry who is the author of this amici brief only learned of Ms. Adkins' petition on January 1 2016. She had insufficient time to give the 10-day notice to the attorney, Todd Weiss, who represented

the respondent James Adkins in the courts below. Ms. Barry contacted Attorney Weiss' office on Friday, January 8, 2016. She requested a waiver of the ten-day notice and inquired of whether Mr. Weiss had any objection to the filing of this brief. The employee of the firm with whom Ms. Barry spoke instructed her to send an email to Attorney Weiss, that Mr. Weiss was not formally retained by Mr. Adkins for the Supreme Court proceeding, and Mr. Weiss would insure that Mr. Adkins received the email. The email was emailed on January 8, 2016, at 1:29 PM and states as follows:

Patricia Barry <joanbarrylegal@yahoo.com>

To toddmweiss@sbcglobal.net Star Moffatt Jan
8 at 1:29 PM

My name is Patricia J. Barry, Attorney in Los Angeles. I am writing an amici/amicae brief on behalf of several organizations supporting Petitioner in the above-named Petition. The organizations are as follows: California Protective Parents Association, Safe Kids International, and possibly, THE LEADERSHIP COUNCIL ON CHILD ABUSE AND INTERPERSONAL VIOLENCE. Pursuant to Rule 37 of the Supreme Court Rules, I should have notified the respondent ten days before I filed the brief which is due on January 11, 2016. Please be sure to notify Mr. Adkins as your legal assistant with whom I spoke on the phone today indicated the firm is not representing Mr. Adkins in the Supreme Court. She asked me to send an email

to you and you and she will make sure Mr. Adkins knows about this request.

I need to know whether Mr. Adkins will waive the 10 days notice and whether he will have an opposition to the filing of the brief. I am certain that Attorney Moffatt will agree to any amicus brief on his behalf.

Please let me know ASAP Mr. Adkins' position on waiver of the 10 days notice and whether he has any opposition to the filing of the amicus brief. Happy New Year.

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As of January 11, 2016, Attorney Barry has received no response from either Mr. Weiss or Mr. Adkins.

As educators, representatives, and advocates of thousands of mothers, of domestic violence and child abuse victims nationwide, Amici have a significant interest in the outcome of this case because ex-parte proceedings are often used to deprive Mothers of custody in violation of their due process and equal protection rights. Mothers are also losing custody without justification and in large numbers only because they allege that they are domestic violence victims and/or that their children are being abused by the father.

Therefore, Amici request that the Court accept their brief.

DATED: January 11, 2016

/s/ Patricia J. Barry
Counsel for Amici Curiae

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INTERESTS OF AMICI CURIAE¹

A. Justice for Children

Justice for Children is a national child advocacy organization composed of concerned citizens who share the belief that communities must act together to protect abused and neglected children from further abuse, and to defend every child's right to grow up in a safe and loving environment. The organization's mission is to provide legal advocacy for neglected and abused children, and to develop and implement collaborative solutions to entrenched problems impeding the quality of life for these children. Justice for Children also works to raise awareness about the failure of government agencies to protect victims of child abuse.

Justice for Children works together with Children's Protective Services and related agencies to provide a full range of services for abused and neglected children, including legal advocacy, public policy monitoring, mental health services, research, and education. When appropriate, Justice for Children also opposes court or agency action that threatens the interests of

¹ No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. Petitioner has consented to the filing of this brief by letter. Amici Curiae have motioned this Court for leave to file, as no response was received from Respondent's counsel. Rachel Worswick, sister of Petitioner Janet Adkins, paid for the printing of this brief. No other person paid for the printing of this brief.

these victimized children. Justice for Children has appeared as *amicus curiae* in numerous cases throughout the country. Its advocacy is recognized and valued by local and national media, legal and medical professionals, child abuse experts, and various other children's rights organizations.

B. Safe Kids International

Safe Kids International is a non-profit, public benefit, social media organization founded in 2012 to expose the epidemic of judges taking custody of children away from safe mothers and granting it to abusive fathers. The research is clear that this illegal, unethical, immoral and unconstitutional switching of custody is happening on a regular basis. Some of the best empirical evidence confirming its prevalence is on the Safe Kids International Facebook page. Along with posts documenting hundreds of cases, thousands of women have posted and commented about their own experiences of having lost custody of their children unjustly.

One of the most common methods used in this switching of custody is "temporary" orders, often made *ex-parte*. Fathers typically make false and unsupported accusations that the mother is lying, alienating or mentally ill. Custody is then taken from the mother without an evidentiary hearing or due process and the "temporary" order inevitably ends up becoming permanent many months or even years later, even when the original accusations against the mother are found not to be substantiated. Ironically, one of the reasons used for making the order permanent is that the children have been living with their father for a long time and their lives should not be disrupted.

The temporary switching of custody from mothers to fathers is a common occurrence; however, temporary switching of custody from a falsely accused father to a controlling or abusive mother rarely occurs. This demonstrates that issuing of temporary or ex-parte orders is a discriminatory practice and should be eliminated, not only because it violates due process, but because it is harming women as a class.

Temporary or ex-parte orders switching custody from one parent to another should not be made without credible evidence of physical or sexual abuse being presented to the court and due process being applied, including a speedy trial. The instant *Adkins v. Adkins* case has the potential of providing precedent which could help save millions of women in the future from wrongly losing custody—and millions of children from losing their mother and being endangered.

Safe Kids International supports Janet Adkins in the *Adkins v. Adkins* case before the Appellate Court, as Janet has unjustly lost custody through unconstitutional “temporary” ex-parte orders.

C. California Protective Parents Association

California Protective Parents Association is a non-profit organization dedicated to assisting and advocating on behalf of non-abusive parents seeking to protect their children in custody disputes. CPPA’s mission is to protect children from incest and family violence through research, education, and advocacy. CPPA provides information and referrals to protective parents both in California and nationally; it collaborates on research to identify issues arising in cases involving children’s disclosure of abuse in

the context of parental separation and divorce; and it supports self-represented parents by accompanying them to court proceedings whenever possible.

By providing courts, the California Judicial Council, and policy makers with possible solutions to the widespread problem of domestic and child abuse, and by assisting in the education and training of professionals who make custody recommendations to courts, California Protective Parents Association is an agent for social change, ensuring that children are physically and sexually safe in their homes.

D. Michigan National Organization for Women (NOW)

Michigan NOW is a statewide feminist activist organization affiliated with the National Organization for Women, the largest feminist grassroots activist organization in the U.S. with hundreds of chapters in every state and the District of Columbia. Michigan NOW advocates for women's equal rights and recognizing that there is crisis for many women and their children in family courts seeks to address discrimination and abuse of protective parents in those courts.

Michigan NOW and many local NOW chapters in Michigan and across the country receive numerous calls from protective mothers who face the loss of custody of minor children to abusive ex-partners. Our members take action against regressive family law legislation such as forced joint custody, move-away prohibitions against custodial parents and formal recognition of the (fake) psychological syndrome, Parental Alienation which is used in court against

protective parents. NOW activists inform legislators and the public of the undesirable and unfair consequences of such legislation—which is often embraced by conservative legislators.

A NOW Foundation Family Law Ad Hoc Advisory Committee, based in Michigan, monitors such reports, publishes an informative newsletter and reports on family law developments to NOW leaders and the public. Individual NOW activists in Michigan and elsewhere have served as informed court observers in many child custody cases.

We know that judicial bias against women is a common problem having been documented by NOW Legal Defense and Education Fund (now known as Legal Momentum) beginning in the 1980s, as the work of their National Judicial Education Program (<http://www.nowldef.org/gender-bias-courts>). Other researchers have also documented courts' lax standards, poorly trained court personnel and pervasive judicial bias against women.

Custody switching is a favored tactic of former spouses wanting to avoid child support responsibilities or wishing to punish their former partners and who have superior financial resources to wage an expensive court battle to gain custody of minor children. There is evidence that judges tend to favor the former spouse who has more financial resources than the other—usually mothers—and this becomes an important determinant in who is awarded custody. All other evidence, including fitness of a parent or documentation of abuse by the other parent is discounted, unfortunately.

Michigan NOW supports U.S. Supreme Court Docket #15-754, Janet K. Adkins, Petitioner, a Michigan mother who has faced loss of custody of her minor children from what appears to be judicial bias. There needs to be a clearer articulation in law of what constitutes “parental rights” that would better inform family courts by requiring proof—not mere allegations—against the fitness of a parent before custody is removed. The *Adkins* case presents the best opportunity for that clarification which we hope will have a wide ranging impact in protecting the rights of fit parents. Michigan NOW will continue to work for reform of family courts so that proper standards and procedures are adhered to so that all elements of bias and punitive treatment of protective parents are eliminated from family courts.



SUMMARY OF ARGUMENT

Because of the constraints of time, this writer has not cited the law. The purpose of this brief is to provide the overwhelming empirical data proving that gender discrimination against female parents in particular, female protective parents and those mothers who allege domestic violence is epidemic in the family courts throughout the land. The data are provided to buttress the arguments in the Petition, in particular the arguments at pp.21-25 alleging disparate treatment of mothers. Petitioner argues at p.22 of her petition:

Within the State of Michigan, State of New York, State of Utah, State of Pennsylvania,

and the State of California a premise within these Family Law Courts exists a common pattern and practice by causing disparate treatment during Child Custody determinations by not upholding the Federal Constitutional laws applicable to the Fourteenth Amendment. This disparate treatment causes gender discrimination amongst women who chose not to terminate their pregnancies, as prescribed within *Roe v. Wade*. Restating Stewart, J., concurring opinion in part within *Roe v. Wade*, he stated, “the question then becomes whether the state’s interest advanced to justify this abridgement can survive the ‘particular careful scrutiny’ that the Fourteenth Amendment here requires.” Consequently, when a State has granted an ex-parte Motion or Order to terminate a woman’s right for parenting time with her own child, the ex-parte Motion or Order denies the woman access to her child(ren), because the States interfered with the woman’s ability to exercise her traditional and constitutional parental rights and protections guaranteed within the Fourteenth Amendment.

It is the disparate treatment of mothers which is addressed in the data as well as showing that one study proves that most protective mothers lose custody in ex-parte proceedings as occurred with Janet Adkins, although admittedly she did not allege domestic violence or child abuse. Petitioner Adkins demonstrates vividly that gender of the parent, standing by itself, plays a substantial role in custody proceedings.



ARGUMENT

I. JANET ADKINS' LOSS OF CUSTODY IN AN EX-PARTE PROCEEDING IS TYPICAL OF WHAT IS HAPPENING ACROSS THE UNITED STATES

Mothers losing custody in ex-parte proceedings is not unusual, whether there is domestic violence or not. It happens, however, more often in domestic violence and child abuse cases in family courts. Leadership Council on Child Abuse and Interpersonal Violence, found at <http://www.leadershipcouncil.org/1/pas/dv.html> provided a summary of reports related to the topic, "Are 'Good Enough' Parents Losing Custody to Abusive Ex-Partners?"

One of the reports cited on the website is authored by Stahly, G. B., Krajewski, L., Loya, B. Uppal, K., German, G., Farris, W., Hilson, N., & Valentine, J. (2004) and is entitled "Protective Mothers in Child Custody Disputes: A Study of Judicial Abuse. In Disorder in the Courts: Mothers and Their Allies Take on the Family Law System" (a collection of essays), electronic download available at http://store.canow.org/products.php?prod_id=3.

According to a summary of the Stahly report, female protective parents generally lost custody by way of an ex-parte proceeding:

To better understand the problems that protective parents face in the legal system, researchers at California State University, San Bernardino, are performing an on-going

national survey. To date, over 100 self-identified protective parents have completed the 101-item questionnaire. The study found that prior to divorce, 94% of the protective mothers surveyed were the primary caretaker and 87% had custody at the time of separation. However, as a result of reporting child abuse, only 27% were left with custody after court proceedings. 97% of the mothers reported that court personnel ignored or minimized reports of abuse and that they were punished for trying to protect their children. 45% of the mothers say they were labeled as having Parental Alienation Syndrome (PAS). Most protective parents lost custody in emergency ex-parte proceedings (where they were not notified or present) and where no court reporter was present. 65% reported that they were threatened with sanctions if the “talked publicly” about the case. emphasis added.

The average cost of the court proceedings was over \$80,000 and over a quarter of the protective parents reported being forced to file bankruptcy as a result of filing for custody of their children. 87% of the protective parents believe that their children are still being abused; however, 63% have stopped reporting the abuse for fear that contact with their children will be terminated. Eleven percent of the children were reported to have attempted suicide.

In another internet article, the Leadership Council published an article a scholarly article, "Myths That Place Children At Risk During Custody Litigation", Dallam. S. J., & Silberg, J. L. (Jan/Feb 2006). *Sexual Assault Report*, 9(3), 3347. reported that awards of custody to abusive parents are not rare and exploded the myth that Fit mothers do not lose custody.

Many people assume that the only way a mother would lose custody to an alleged batterer or child abuser was if she were proven to be an unfit parent. Most people have difficulty believing that a court would take a child away from a mother who has heretofore been the child's primary caretaker if her only crime is expressing concern about her own or her child's safety. Unfortunately, this is happening; the only real question is why.

There is no single answer to this question. Instead, it appears that a number of factors are involved. First, there is a widespread belief in our society that a person who both appears and acts normal could not possibly be a violent batterer or child abuser. Offenders are well aware of our propensity for making assumptions about private behavior from one's public presentation and they tend to use this knowledge of our collective blindness to their advantage by appearing to be the perfect parent during court appearances (Salter, 2003). Mothers concerned about the safety of their children, on the other hand,

often appear overly concerned and as if they are exaggerating the problem.

As a report by the American Psychological Association pointed out:

If the court ignores the history of violence as the context for the mother's behavior in a custody evaluation, she may appear hostile, uncooperative, or mentally unstable. For example, she may refuse to disclose her address, or may resist unsupervised visitation, especially if she thinks her child is in danger. Psychological evaluators who minimize the importance of violence against the mother, or pathologize her responses to it, may accuse her of alienating the children from the father and may recommend giving the father custody in spite of his history of violence. (APA, 1996)

A second reason that fit mothers lose custody to alleged abusers is that many officers of the court believe that the only reason women raise abuse allegations during custody disputes is to gain a tactical advantage. Research, however, fails to find such an advantage. In fact, women who raise abuse allegations appear to receive less favorable rulings than those who do not (*see e.g.*, Saccuzzo & Johnson, 2004). This may be because women who allege abuse may be seen as fabricating or exaggerating incidents of violence as a way of manipulating the courts (Doyme et al., 1999). For this reason, some lawyers advise women not to tell

courts or mediators about child abuse or domestic abuse because, by doing so, they risk losing custody to the alleged abuser (“Custody Litigation,” 1988; Saccuzzo & Johnson, 2004).

A third factor contributing to the problem is statutory. Most state legislatures have enacted legislation requiring family courts to favor joint custody arrangements, and when this isn’t possible, to favor the parent who appears most “friendly” to a joint custody arrangement. At least 31 states have statutes requiring courts to consider how “cooperative” the parent is when determining custody arrangements (Gonzalez & Reichmann, 2005).

The intent of “friendly parent” preferences is to guarantee that children go to the parent most likely to facilitate the child’s relationship with the other parent. Although this goal is laudable; in practice, the result has been to penalize parents who raise concerns about child abuse or domestic violence (Dore, 2004). Friendly parent preferences tend to favor abusers who rarely object to the non-abusive parent having access to the child.

Protective parents, on the other hand, frequently seek to curtail a violent parent’s access to the child. Moreover, the very act of raising concerns of abuse, suggests to the court that the protective parent is inherently “unfriendly” and should therefore be denied

custody (Dore, 2004). Some professionals have found that the friendly parent concept is most often employed against the custodial or primary parent, typically the mother (Zorza, 1992).

Some states have tried to rectify injustices resulting from friendly parent preferences by enacting presumptions against custody to a perpetrator of domestic violence. Unfortunately, these presumptions are not always followed, especially when “friendly parent” preferences continue to remain on the books. For instance, Morrill et al. (2005) evaluated the effectiveness of statutes mandating a presumption against custody to a perpetrator of domestic violence in 6 different states. The investigators examined 393 custody and/or visitation orders where the father perpetrated domestic violence against the mother and surveyed 60 judges who entered those orders. They found that children failed to be protected in states with a statutory presumption against custody to an abuser when the state also had a “friendly parent” provision in their statutes with a presumption for joint custody.

A fourth reason that fit mothers may lose custody to an alleged abuser is due to lax standards that allow junk science to influence custody decisions in family courts. Over the years a number of “syndromes” have been developed that pathologize the responses of parents who seek to protect

their child from an abusive spouse. The most popular of these syndromes, “Parental Alienation Syndrome.” is discussed in the next section.

In the First Amended Complaint in *Hanson v. LaFlamme, et al.*, Case NO. SACV 14-01823 AG, Central District of California, Kristin Hanson, the mother of a daughter who is now 22 years old, alleged that the father demanded more custody when the child turned 6, the child cried and became anxious when she had to go with her father, the mother took her to a child psychiatrist to whom the child disclosed her father was sexually molesting her. In Kristin’s ex-parte proceeding to take custody from the father or place him in supervised visitation, the psychiatrist testified and attempted to render an opinion that the child was credible and had disclosed her father was molesting her. The commissioner insulted the psychiatrist, and refused to consider his testimony that the child was being sexually abused by her father. He denied the ex-parte application for protection of the child.

A judge appointed another child psychiatrist to determine whether the child was being molested. The minor’s counsel, Harold LaFlamme, an Israeli gun dealer with no college degree and no qualifications to serve as minor’s counsel banded together with the father and the judge to keep the court-appointed psychiatrist from testifying who would have testified as the first psychiatrist did, that the child was credible, she reported her father was molesting her, and the father needed to be in supervised visitation. In a closed-door chambers conference with no reporter

present, and Kristin and her daughter banned from the chambers, the judge turned over custody to the father with no evidentiary hearing. Each time Kristin sought an evidentiary hearing, she was denied one and often threatened with jail. She was jailed on at least three occasions. She has not seen her daughter for twelve years.

In *Fotinos v. Fotinos*, Case No. CV 12-0953 MEJ, Northern District of California, Michele Fotinos alleged domestic violence against John Fotinos. In August 2003, Michele fled with her two children from the home and went into hiding. Michele had filed a good cause report with the District Attorney's Office which provides a defense to the accusation of child kidnap. John Fotinos obtained an ex-parte order of custody in August 2003 making false and inflammatory allegations against Michele, and the Court granted it. John Fotinos located her and the children's whereabouts and had police officers seize the children around 2 A.M. and take them from their beds in their pajamas. Michele was placed in supervised visitation, eventually awarded joint custody but the father kept the children from Michele for six months. A judge awarded her sole custody. After six days of sole custody, a minor's counsel and a discharged reunification therapist filed an ex-parte against her and her children were taken again from her.

Rachel, now an adult, could no longer tolerate the abuse of her father and went to live with her mother in December 2011 eight years after the children were taken from Michele in an ex-parte proceeding. It took Michele almost a year to obtain an order of custody and a one-year restraining order

for Rachel. Michele never regained custody of her son who lives with the father. The father who has three felonies was picked up with 14 guns, 2 assault rifles, 20 high capacity magazines, and 10,000 rounds of live ammunition in June 2012. He did not go to jail or prison. His wife owns guns. The District Attorney never recovered three guns registered to him. Because the Court will not give her and Rachel a restraining order, they have gone into hiding. Michele and Rachel have not seen Michele's son for almost two years.

In *Baddour v. Hart*, Case No. CV-14-01355 PJH, pending in the Northern District of California, Plaintiff alleged domestic violence. She had called Daly City Police Department on four occasions. The officers provided her no protection. On the fourth occasion, her husband had cut her hand. The officer showed up and warned her that if she kept making false police reports, she would lose her kids. He did not offer her an emergency protective order nor did he inform her of her other rights. He went to the police department to interview the father. The father presented him a 2-minute tampered cell phone video, and on the basis of hearing thumps in the video and seeing redness on the side of the husband's face, the officer arrested Plaintiff for felony domestic violence and decided that she had self-inflicted the cut on her hand.

The officer promised the husband that when he arrested Plaintiff she would leave only with the clothes on her back and no car keys, because the husband did not want her to have a vehicle to drive when she got out of jail. The officer made good on his word and allowed her only her identification and her

cell phone. He encouraged the husband to obtain an emergency protective order and falsified the request for the EPO by claiming Plaintiff had hit the husband when the video did not show her hitting him. In fact, in the video one can hear her repeatedly deny she had hit him. Plaintiff was arrested and jailed for felony domestic violence, was forced out of the family home, and denied access to her children for ten days. The criminal case was dismissed by the prosecutor when she saw the videotaped interview of the husband which showed him reading the officer's interview notes of the plaintiff while the husband was waiting for the officer to interview him.



CONCLUSION

Petitioner Adkins has put issues before this Court which affect hundreds of thousands of mothers caught up in family court in a custody dispute or trying to escape domestic violence and trying to protect their children. They are undermined, treated as less credible simply on the basis of their gender, threatened with jail and often jailed, told to be silent, and often lose all their assets.

Amici respectfully request that the Court grant certiorari in this case.

Respectfully submitted,

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