

# ON THE VALUE OF TEDDY BEARS AND BARBIE DOLLS: THE PLACE OF CHILDREN'S TRANSITIONAL OBJECTS IN FAMILY LAW

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The best interests of the child (BIC) standard requires that the courts take careful account of the child's needs in the process of resolving family conflicts. Chief among these is the child's need for continuity across what are commonly very disparate care environments. "Transitional objects" are those portable, idiosyncratic and beloved things that many children spontaneously adopt as one means of creating continuity and coping with anxiety. The present review defines the concept of the transitional object and identifies its neglected place in court-ordered evaluations, guardian ad litem investigations, and family law practice. Two specific cases—one American and one Canadian—are discussed as they mutually illustrate the importance of the child's transitional object in the BIC formulation. In both cases, the court identified one parent's mistreatment or rejection of a child's transitional object as a critical clue relevant to understanding that parent's capacity for child-centered caring and the future allocation of parenting rights and responsibilities. We amplify these findings, recommending that family law professionals can better serve children and fulfill the mandate of the BIC standard by validating the developmental value of a child's transitional objects.

## I. INTRODUCTION

The [Mother] sent the [Father] an e-mail explaining that Grace was still experiencing separation anxiety and that the child would be bringing Fluffy with her because she found the stuffed animal emotionally reassuring . . . . Fluffy was just . . . *Fluffy*. Just a harmless little toy of no consequence to anyone . . . except a vulnerable two-year-old caught in the middle of a bitter

custody dispute. Would it have killed [Father] to just let the child hang on to her toy?<sup>1</sup>

The record indicates that the doll was a Caucasian, “Barbie-” sized doll, representing Beauty from the “Beauty and the Beast” animation. Mr. McCorvey had previously asked Ms. McCorvey why Darian had this ‘big ole white doll.’ At the time of this exchange, Mr. McCorvey took the doll away from his little girl and discarded it under the carport.<sup>2</sup>

The evolution of the legal heuristics intended to guide child custody from adult-centered mandates (e.g., the Common Law concept of chattel, the Tender Years principle, the Approximation Rule, and even the contemporary movement toward a presumption of joint custody)<sup>3</sup> to the best interests of the

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1. *Chomos v. Hamilton*, 2016 ONSC 5208, at paras. 69, 74. The author [Garber] is grateful to Dr. Barbara Fidler for bringing this case to his attention. At the outset, the authors wish to clearly note that the cases discussed in this article involve fathers but that, in our many years of experience, mothers and other family members have and do use transitional objects for children as weapons and pawns. From sports equipment, to trophies earned, to marking clothing with a parents’ name, to refusing to allow a video game console to travel, to a family pet or blanket, the impact is no different and, we hypothesize, if researched—gender would not be a significant predictor of these behaviors by a parent.

2. *McCorvey v. McCorvey*, 2005-174, p. 12-13 (La. App. 3 Cir. 11/2/05); 916 So. 2d 357, 367. The case has proceeded, as so many of these cases do, to more litigation on economic issues. The court’s opinion on appeal began as follows:

In this seemingly endless, fractious and contentious domestic dispute, Defendant, Derriel McCorvey, appeals from the trial court’s judgment on the partition of the community property, the child support award, contempt and sanction issues, and cost assessment. For the reasons set forth below, we affirm in part, reverse in part, and modify and amend in part the judgment of the trial court.

*McCorvey v. McCorvey*, 2005-889, p.1 (La. App. 3 Cir. 2/1/06); 922 So. 2d 694, 695.

3. See, e.g., *Bazemore v. Davis*, 394 A.2d 1377, 1380 (D.C. 1978) (“Under common law, there was no presumption in favor of the mother. To the contrary, [t]he father, as a matter of right, was entitled to the custody of his children.”). As the Supreme Court of Iowa stated,

child (BIC) standard has required family courts and the professionals who work in those host environments to become fluent in the language of child psychology.<sup>4</sup> As a result, today's family law rulings are rife with nuanced theories and measures more familiar to students of human development and based upon a spectrum of family dynamics unimagined even a decade ago.<sup>5</sup> Experts and courts speak in terms of self-esteem and hybrid models,

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Joint custody is an appealing concept. It permits the Court to escape an agonizing choice, to keep from wounding the self-esteem of either parent and to avoid the appearance of discrimination between the sexes. Joint custody allows parents to have an equal voice in making decisions, and it recognizes the advantages of shared responsibility for raising the young. But serious questions remain to be answered. How does joint custody affect children? What are the factors to be considered and weighed?

*In re Marriage of Burham*, 283 N.W.2d 269, 274 (Iowa 1979).

4. Professor Charlow posits,

The "best interests of the child" is the standard for awarding child custody in the United States, a standard that presumably places paramount importance on the child's physical and psychological well-being. While in theory this standard appears enlightened, in practice custody decisions focus on parents rather than children and are marred by personal and cultural bias. Predictions are made without a scientific foundation and, frequently, in contravention of research findings and constitutional equal protection requirements.

Andrea Charlow, *Awarding Custody: The Best Interests of the Child and Other Fictions*, 5 YALE L. & POL'Y REV. 267, 267 (1987). See Benjamin D. Garber, *Attachment Methodology in Custody Evaluation: Four Hurdles Standing Between Developmental Theory and Forensic Application*, 6 J. CHILD CUSTODY 38, 39 (2009) ("The dilemma lies in the fact that the best-interests standard requires consideration of factors that go well beyond those social, emotional and cognitive variables that psychologists are prepared to address . . .") [hereinafter Garber, *Attachment Methodology*]; Alex S. Hall et al., *Psychology of Best Interest Standard: Fifty State Statutes and Their Theoretical Antecedents*, 24 AM. J. FAM. THERAPY 171, 171 (1996) ("In this article, we provide a national perspective on the legal and psychological status of the best interest standard as of 1993. In so doing, we present basic information about legal and psychological standards and provide a guide in table form for the ethical use of these standards.").

5. One expert opined,

[O]nce an attachment is formed it is highly unlikely that a child would become unattached. Rather, he would describe a change in the relationship with the child in terms of the quality of the attachment having been disrupted. He identified possible causes of disruption of the attachment to be a parent leaving, having a psychotic problem, changing dramatically, being absent, or being the subject of parental alienation.

*Palazzolo v. Mire*, 2008-0075, p. 28 (La. App. 4 Cir. 1/7/09); 10 So. 3d 748, 765. In another case,

[A] child therapist and evaluator, testified at length about attachment theory and the consequences of failing to form a secure attachment in infancy. She explained that B.P. had experienced multiple disruptions just as she was forming attachments to H.O. and to various foster parents, and that when a child suffers too many disrupted attachments, that child may "detach completely" and stop trying to connect emotionally or socially.

*In re Parental Rights to B.P.*, 376 P.3d 350, 356 (Wash. 2016). One judge described the "best interests of the child" standard as follows:

[C]ustody, when contested, goes to the parent who the court believes will do a better job of child rearing. This standard is a substitute for the maternal preference rule or its gender-neutral successor, the primary caretaker parent rule. It operates as well in those states retaining a weak maternal preference, with that preference being only a tie breaker. In order to assign custody, the court must explore the dark recesses of psychological theory to determine which parent will, in the long run, do a better job. However, this undertaking inevitably leads to the hiring of expert witnesses—psychologists, psychiatrists, social workers and sociologists.

*David M. v. Margaret M.*, 385 S.E.2d 912, 918-19 (W. Va. 1989).

developmentally-informed parenting plans and graduated transitions of parenting responsibilities based on the feedback of therapists, when, in truth and practice, the empirical foundation underlying these concepts and practices too often falls short of the rigor applied to other forms of expert testimony and are too easily misused or misapplied by the adversarial system.<sup>6</sup> As a result, the family law process has long sought reliable, valid and practical means to assess and/or to create the stability, consistency and quality of care known to be associated with healthy developmental outcomes.<sup>7</sup> Until such measures and processes are established, however, family courts often default to the “least detrimental” outcome to the parents, rather than the historical and prevailing BIC standard.<sup>8</sup>

We contend that many families enter the court system possessing a critical clue to the child’s well-being and as a visible means to observe the quality of each parent’s sensitive and responsive care but which has thus far been largely overlooked by the family law process. The child’s transitional objects (TO) provide the family courts with a direct window into her (or his) capacity for self-soothing, her secondary sources of comfort, her means of

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6. Case in point: The psychological construct known as attachment theory is one of the most thoroughly researched, most reliable and validated constructs in the field. Its relevance to understanding the quality of parent-child relationships is self-evident and therefore its appeal to family law professionals seeking expert testimony with a sheen of empirical truth is undeniable. The measures used to assess attachment theory are not, however, adequate for and have yet to be validated in the courts. See Garber, *Attachment Methodology*, *supra* note 4. For a discussion of the role of expert witnesses and challenges for family courts, see Dana E. Prescott, *Forensic Experts and Family Courts: Science or Privilege-by-License?*, 28 J. AM. ACAD. MATRIM. LAW. 521-24 (2016).

7. See Dana E. Prescott, *The AAML and a New Paradigm for “Thinking About” Child Custody Litigation: The Next Half Century*, 24 J. AM. ACAD. MATRIM. LAW. 107, 137-38 (2011) (“As applied to child custody litigation, the functional/contextual approach, as a means to evaluate knowledge and policy implications in practice, integrates the aggregate of parental choices within an evolving family system and adaptive time horizons.”). The search by legal scholars to find and impose an empirical and rule-based system for judicial decision-making is many generations old. It may be re-packaged but the polar arguments between law as organic and socially based and changing to rigid and predictable is not new. See Jerome Frank, *Mr. Justice Holmes and Non-Euclidean Legal Thinking*, 17 CORNELL L. Q. 568, 571 (1931) (“[T]raditional jurisprudence is founded upon the erroneous notion-sometimes expressed but more often implicit-that there are self-evident truths about the judicial process which must not and cannot be questioned, from which self-evident truths a legal system can be worked out logically as the ancient geometers had worked out their system from self-evident geometrical axioms.”).

8. The Supreme Court of North Dakota, for example, acknowledged its preference for the “least detrimental” standard:

The phrase “the least detrimental alternative” was referred to by this court in *DeForest v. DeForest*, 228 N.W.2d 919 (N.D.1975). We stated at footnote 1 that the exact words “best interest of the child” need not necessarily be used in the findings. The phrase was borrowed from the authors of *Beyond the Best Interests of the Child* who suggested that the more appropriate guideline in custody determinations is “what available alternative is the least detrimental to the child.”

*Lapp v. Lapp*, 293 N.W.2d 121, 130 n.3 (N.D. 1980).

obtaining nurture-by-proxy, and how she is managing developmentally appropriate steps toward autonomy.<sup>9</sup> It is astonishing to realize that decades of conceptual discussion and empirical study concerned with the value of TOs is much less controversial and ephemeral than other subjects of psychological research commonly imported into the courtroom, e.g., attachment theory and overnights for young children. Because TOs are most commonly tangible and visible objects as seemingly trivial (to adults) as Teddy bears and Barbie dolls, a plain, factual record of children's needs and caregivers' corresponding empathy or entitlement, nurture or neglect, sensitivity or selfishness is easily set forth before the courts in support of the BIC.<sup>10</sup>

Thus, there is nothing written here that is novel to child development theory or interventions. We write for the purpose of introducing the concept of the transitional object to the family law community with the knowledge and hope that forensic evaluators, guardians *ad litem*, and family courts can benefit from factual predicates relevant to the delicate balance of the unique constellation of factors relevant BIC standard. We proceed, therefore, in Section II to explicate the extant theory and research concerned with transitional objects as these can be applied to child custody matters. In Section III, we review two relevant custody cases, one from Canada and one from the United States, which illustrate this application through expert

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9. It is intriguing to note that Canadian case law has pointedly decided that pacifiers are not toys. They are formally and officially recognized as "a transitional object that helps children adjust to new situations and relieves stress." See *Philips Electronics Ltd. v. President of the Canada Border Services Agency*, 2014 CarswellNat 4873, para. 64 (Can. C.I.T.T.) (WL). Some research suggests that "[t]oddler's soft-object attachments were found to be predicted by the maternal variables of constraint and positive affectivity, the latter in combination with low child activity level." Alison J. Steir & Elyse Brauch Lehman, *Attachment to Transitional Objects: Role of Maternal Personality and Mother-Toddler Interaction*, 70 AM. J. ORTHOPSYCHIATRY 340, 340 (2000). Although there's no reason that the child could not create an avatar representing an absent parent who comforts the avatar representing self in a proxy-on-proxy digital form of nurturance.

10. For all the strength of the conceptual and empirical research concerned with children's use of transitional objects, the reader is cautioned that there are many more studies in this area concerning mothers and children than fathers and children (and even fewer that take into account diverse family systems such as the LGBTQ community or kinship care). This caveat is important to bear in mind as contemporary child custody litigation (and research) is not a linear model of marriage and divorce but must consider many convergent factors (e.g., fragile families, addiction, the school to prison pipeline, poverty and non-married parents) which may bear on the efficacy of this research to families in court. See CHARLOTTE J. PATTERSON ET AL., *Socialization in the Context of Family Diversity*, in HANDBOOK OF SOCIALIZATION: THEORY AND RESEARCH 203 (Joan E. Grusec & Paul David Hastings eds., 2015) ("For example, traditions of research have grown up around the study of single-parent families, stepfamilies, and dual-career two-parent families. Results of this research have consistently revealed that family resources, processes, and relationships are more important predictors of successful socialization than are assessments of family structure.").

forensic testimony. In Section IV, we set forth guidelines and expectations for how transitional objects can be better recognized as variables relevant to custody proceedings. Finally, in Section V we offer future issues for consideration.

## II. WHAT IS A TRANSITIONAL OBJECT?

Transitional objects are entirely familiar to anyone who knows a toddler. The thrill of growing gross motor skills (e.g., walking, running, jumping) typically experienced in the second and third year of life must somehow be balanced with the terror of separation from those caregivers who have always previously provided safety and nurturance.<sup>11</sup> Peek-a-boo is an exciting game to these children as it reassures that loss of the parent can be immediately remedied by opening one's eyes. In a like manner, the three-year-old who runs across the room and discovers that mother is no longer in sight, quickly learns that separation can be eased by carrying a bit of mom (or dad) with her as she goes. This can take any form, from a pacifier to a beloved blanket, to a stuffed animal. One memorable five-year-old insisted on carrying his father's socks in his pockets to kindergarten.

These are transitional objects: Idiosyncratically chosen, portable symbols of one or more of a child's caregivers that represent the absent caregiver by proxy and that communicate the absent caregiver's security while apart.<sup>12</sup> Transitional objects are "developmental facilitator[s] which may acquire different qualities and serve different psychological functions as the child moves toward physical and emotional independence."<sup>13</sup> They are

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11. For early research in this area, see Richard H. Passman, *Attachments to Inanimate Objects: Are Children Who Have Security Blankets Insecure?*, 55 J. CONSULTING & CLINICAL PSYCHOL. 825 (1987); Richard H. Passman, *Arousal Reducing Properties of Attachment Objects: Testing the Functional Limits of the Security Blanket Relative to the Mother*, 12 DEVELOPMENTAL PSYCHOL. 468 (1976). An early study which may have application to how a parent may view transitional objects in a child custody case is Paul C. Horton et al., *Personality Disorder and Transitional Relatedness*, 30 ARCHIVES GEN. PSYCHIATRY 618 (1974). In another early paper, the author argued, rather intriguingly, that therapists may constitute transitional objects for some clients. See Michael E. Murray, *The Therapist as a Transitional Object*, 34 AM. J. PSYCHOANALYSIS 123, 124 (1974) ("In order to understand this phenomenon, I have found it useful to view the therapist as a transitional object. The therapist's functioning within the transitional phenomenon is clearly seen in crisis work, but serves as an aspect of the therapist's role in all therapeutic contact."). This actually has some interesting implications in cases in which a parent may interfere with or suddenly terminate a therapeutic alliance for a child in a custody case.

12. The early work in the object relations field and psychoanalysis was developed by D. W. Winnicott and from that grounding much research and theory has evolved. See D. W. Winnicott, *Transitional Objects and Transitional Phenomena; A Study of the First Not-Me Possession*, 34 INT'L J. PSYCHOANALYSIS 89 (1953).

13. Carole J. Litt, *Theories of Transitional Object Attachment: An Overview*, 9 INT'L J. BEHAV. DEV. 383, 383 (1986). Any research in this area now must account for social media and

metaphorical “life preservers” unique to each child, often shaped by circumstance and culture, that serve to help the child keep afloat in the midst of transitions or conflict. TOs are like the spare gas cans that can be carried around in case fuel runs out and the next gas station is still far away.<sup>14</sup> Thus, it is quite common to see a tired three-year-old cling to her beloved and well-worn stuffed animal as her long day at preschool comes to an end, learning how to manage her need for a parent who is not present immediately.

The emotional value of transitional objects may persist across childhood and well into adulthood, although the specific form of the preferred object often shifts with age and development.<sup>15</sup> Toddlers and preschoolers more typically rely on tangible (often filthy, tattered and pungent) objects that provide rich tactile feedback: the synthetic fur of a stuffed animal or the familiar weft of a blanket. Elementary school children are more likely to manage their separation anxiety with verbal and abstract symbols representing home and loved ones (e.g., a note from dad tucked in a lunchbox

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various means to communicate by phone or tablet. The very definition of what may constitute a transitional object may be shifting to technology (whether good or bad for individuals or society is a question beyond this paper). See Joanne Tarasuik & Jordy Kaufman, *When and Why Parents Involve Young Children in Video Communication*, 11 J. CHILD. & MEDIA 88 (2017); Joanne Tarasuik et al., *Transfer of Problem Solving Skills from Touchscreen to 3D Model by 3-to 6-year-olds*, 8 FRONTIERS IN PSYCHOL. 1586 (2017).

14. See Bonnie Honig, *The Laws of the Sabbath (Poetry): Arendt, Heine, and the Politics of Debt*, 5 U.C. IRVINE L. REV. 463, 471 (2015). Professor Honig emphasizes the ingenuity of Winnicott's concept:

[I]t is in relation to objects, in particular through object use and play, that we come to apprehend worldly permanence and acquire some of it ourselves. In his account of object relations, resilience is a key trait of both objects and the subjects who use them. Through play with transitional objects, initially by way of ‘first possession[s],’ like a blanket or teddy bear, Winnicott says, the baby comes to know a reality beyond herself. When the baby cathects onto that object, she acquires the emotional resources to withstand the disappointments of the mother figure or caregiver and comes to feel she may safely rage against them.

*Id.*

15. Not all the research is positive as some research suggests that certain adult personality structures may be observed through strong attachment to transitional objects. See Jill M. Hooley & Molly Wilson-Murphy, *Adult Attachment to Transitional Objects and Borderline Personality Disorder*, 26 J. PERSONALITY DISORDERS 179 (2012). Finally, transitional objects can shift as the authors have observed when applied to power struggles and anxiety related these days to cell phones and other electronic devices like video games. See Veronika Konok et al., *Mobile Attachment: Separation from the Mobile Phone Induces Physiological and Behavioural Stress and Attentional Bias to Separation-Related Stimuli*, 71 COMPUTERS HUM. BEHAV. 228 (2017). And any clinical or judicial analysis or application of transitional objects must account for cultural differences. See Kenneth Tai et al., *Touching a Teddy Bear Mitigates Negative Effects of Social Exclusion to Increase Prosocial Behavior*, 2 SOC. PSYCHOL. & PERSONALITY SCI. 618, 624 (2011) (“Culture has been argued to affect people’s tendency to anthropomorphize. Specifically, people in industrialized countries are more likely to anthropomorphize nonhuman animals as they lack an understanding of the workings of the natural world.”) (citation omitted)).

or a photograph of mom in the bottom of a backpack).<sup>16</sup> Teenagers may be least likely to admit that carrying a representation of mom or dad with them is important, even while they wear a parent's perfume or cologne, locket or ring, and even though they secretly keep a beloved and all-but-forgotten Teddy bear tucked away in a bottom drawer somewhere.

Psychology recognizes that transitional objects serve at least two distinct but developmentally inter-related purposes. In the long-term, transitional objects are the manifest evidence of the child's healthy and expectable effort to incorporate security experienced from others into self.<sup>17</sup> Given that the toddler normatively cannot calm without a caregiver's sensitive and responsive support, transitional objects make that support portable and immediate. Rather than scream and cry in distress while waiting for a parent to bring comfort, finding comfort by association with the physical and emotional presence of Fluffy the Teddy Bear is an adaptive and positive step toward developing self-regulation and the ability to self-soothe.<sup>18</sup> For children of particularly sensitive temperaments and early experiences with instability, family conflict and/or trauma, the experience of at least one caregiver as sensitive and responsive is the least necessary condition associated with healthy outcomes across developmental domains.<sup>19</sup>

In the short-term, transitional objects help the child to bridge the transition between caring experiences. TOs function like the space suit that an astronaut might wear when moving between two space craft or the

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16. See Ruth Stirtzinger & Lorraine Cholvat, *Preschool Age Children of Divorce: Transitional Phenomena and the Mourning Process*, 35 CAN. J. PSYCHIATRY 506, 512 (1990).

17. The American Academy of Pediatrics advises that transitional objects typically should not be removed randomly from a child. See *Transitional Objects*, AM. ACAD. PEDIATRICS, <https://www.healthychildren.org/English/ages-stages/baby/Pages/Transitional-Objects.aspx> (last updated Aug. 1, 2009). A "transitional object can be any tangible and pocketable thing that allows parent and child to feel emotionally connected even while apart. The nature of the transitional object is unique to each dyad, from a shared piece of polar fleece fabric to matching rings or necklaces." Benjamin D. Garber, *Conceptualizing Visitation Resistance and Refusal in the Context of Parental Conflict, Separation, and Divorce*, 45 FAM. CT. REV. 588, 591 (2007). For children with special needs or vulnerabilities, such as autistic spectrum disorder, "the need for sameness in environment may supersede the need for sameness of routine." Daniel B. Pickar & Robert L. Kaufman, *Parenting Plans for Special Needs Children: Applying a Risk-Assessment Model*, 53 FAM. CT. REV. 113, 129 (2015).

18. This aspect of research has been missing in the context of parent behaviors in child custody and links to a child's capacity for self-regulation in various environments such as school and community. See Kathy Stansbury & Marian Sigman, *Responses of Preschoolers in Two Frustrating Episodes: Emergence of Complex Strategies for Emotion Regulation*, 161 J. GENETIC PSYCHOL. 182, 184 (2000) ("If researchers do not study emotion regulation in the context of parent-child interactions, then they are overlooking a likely causal mechanism for its development.").

19. See Mary K. Rothbart et al., *Developing Mechanisms of Self-Regulation in Early Life*, 3 EMOTION REV. 207, 207 (2011) ("By temperament we mean constitutionally based individual differences in reactivity and self-regulation in the domains of affect, activity and attention.").



physical bridge that allows a pedestrian to move between buildings despite the dangerous traffic that separates them. Transitional objects enable a needy or distressed or regressed child to make the emotional leap between caregiving experiences. This short-term bridge-like function is particularly relevant to divorce and family law in that our entire purpose is to define those conditions under which a child will best benefit from the care available from each of two parents who no longer live together and which, thereby, means the child (not the adults) moves his life between two (or more) homes..

Thus, the three-year-old is able to fall asleep in dad's new apartment if she has the pillow mom sent along for the overnight. The six-year-old better manages the stressful shift from dad's care back into mom's care if he is allowed to wear dad's watch while they're apart. The young teenager tolerates an extended summer vacation with one parent and the corresponding extended absence from the other parent when she has a note tucked away from the absent parent to be opened as the need arises. Even the adult lawyer or psychologist looks across the office in the midst of stress and sees a drawing by a child or a favorite picture from a day kayaking on a lake and draws a small smile and a breath.

In clinical and educational settings, transitional objects help children manage stressful medical procedures<sup>20</sup> and cope with social anxiety.<sup>21</sup> Teenagers may use transitional objects to overcome somatoform disorders.<sup>22</sup> In their most common therapeutic application, transitional objects can be critical aids at bedtime as well: "At bedtime, when a child is falling asleep and his or her mother is not present in the room, the transitional object relieves the child of anxiety because it reminds him or her of the constant integrative emotional presence of the absent mother."<sup>23</sup> Indeed, research finds that even college students—particularly those with a history of depression—continue to rely on idiosyncratic transitional objects to achieve sleep.<sup>24</sup>

Teenagers and young adults might be described as transitioning between transitional objects. Even while they still rely (albeit covertly and with

20. See generally Gabriel J. Ybarra et al., *The Presence of Security Blankets or Mothers (or Both) Affects Distress During Pediatric Examinations*, 68 J. CONSULTING & CLINICAL PSYCHOL. 322 (2000).

21. See Kenneth Tai et al., *Touching a Teddy Bear Mitigates Negative Effects of Social Exclusion to Increase Prosocial Behavior*, 2 SOC. PSYCHOL. & PERSONALITY SCI. 618, 622 (2011).

22. See Ritva Erkolahiti et al., *Transitional Object Use in Adolescence: A Developmental Phenomenon or a Sign of Problems?*, 70 NORDIC J. PSYCHIATRY 536 (2016).

23. Courtney McCullough, *A Child's Use of Transitional Objects in Art Therapy to Cope with Divorce*, 26 J. AM. ART THERAPY ASS'N 19, 20 (2009).

24. See Charla Markt & Martin Johnson, *Transitional Objects, Pre-Sleep Rituals, and Psychopathology*, 23 CHILD PSYCHIATRY & HUM. DEV. 161, 170-71 (1993).

excruciating embarrassment) on verbal and symbolic representations of family, parents and home, “they move proudly and defiantly toward association with clubs and groups, teams, and gangs.”<sup>25</sup> These group associations become new sources of emotional fuel visible in the prominent colors and brands and symbols that define membership or belonging. These “transitional affiliations”<sup>26</sup> serve as launching pads that help children, at various developmental phases and over a life span, move constructively away from family-of-origin toward intimate partnerships.

The irony that may be lost here is that the judicial system is frequently tasked in divorce with dividing adults’ personal property at considerable expense. The vigor and emotion that is so often invested in the dispensation of concrete items (e.g., wedding rings, photo albums, or the china inherited from a distant relative) becomes disproportionate and even irrational not because of their market value, but instead because of their emotional value. These too, are transitional objects. They are symbols of once-held or wished-for security, the loss of which communicates the end of the relationship as much or even more so than the divorce itself.<sup>27</sup> The proof of this argument is found in the recurrent nightmare of our contemporary world: adults locked

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25. Benjamin D. Garber, *For the Love of Fluffy: Respecting, Protecting, and Empowering Transitional Objects in the Context of High-Conflict Divorce*, 60 J. DIVORCE & REMARRIAGE 552, 554 (2019).

26. For a review of these concepts, see BENJAMIN D. GARBER, *HOLDING TIGHT-LETTING GO: RAISING HEALTHY KIDS IN ANXIOUS TIMES* (2016); Benjamin D. Garber, *Exploring a Process-Oriented Forensic Family Observation Protocol*, 54 FAM. CT. REV. 261 (2016).

27. See Maria Kalpidou, *Sensory Processing Relates to Attachment to Childhood Comfort Objects of College Students*, 182 EARLY CHILD DEV. & CARE 1563 (2012). In *Frederick v. Frederick*, the court found:

In the former husband’s version of events, the former wife simply refused to participate in the procedures set out in the divorce judgment and the 1999 consent order to divide the parties’ personal property and had cursed at him whenever he attempted to engage in that process. In the former wife’s version of events, the former husband took whatever personal property he wanted without consulting her, refused to make a list of the specific personal property in his possession, refused to reschedule the date to complete the inventory as ordered by the trial court, and repeatedly filed litigation with the intent to harass the former wife.

92 So. 3d 792, 798 (Ala. Civ. App. 2012). In another case, the point of contention before the court was as follows:

The respondent next asserts that the trial court erred when it awarded each party the personal effects in their possession. He contends, “While that might sound fair, [the respondent] had virtually no personal[ity] in his possession . . . [He] was reduced to not even having pots and pans.” The petitioner testified, however, that the respondent took approximately \$60,000 worth of personal property from the marital home after she filed for divorce.

*In re Sarvela*, 910 A.2d 1214, 1221 (N.H. 2006). The Supreme Court of Wyoming also found:

“Generally, a claimant may not recover for the sentimental or fanciful value placed on lost property such as photographs, portraits and heirlooms.” Although Broyles states that sentimental value may not typically be used to establish damages for property wrongfully converted, it does not state that sentimental value cannot be considered in awarding property in a divorce case.

*Sanning v. Sanning*, 233 P.3d 922, 924 (Wyo. 2010).

down in an active shooter scenario or faced with a terrorist threat routinely tell stories about seeking comfort from images and trinkets that bring them comfort by association to absent loved ones.<sup>28</sup>

Transitional objects not only carry meaning across the lifespan, but they are also valued across cultures, race, socio-economic status, language, and country-of-origin.<sup>29</sup> They are not, however, universal. Many children manage development without obvious or consistent deference to an identifiable security prop. Psychological research suggests that children who do rely on some form of transitional object at some point in the course of development may have mothers with certain characteristics.<sup>30</sup> They tend to have greater psychosocial stress, including longer and more frequent separations from caregivers.<sup>31</sup> Although the quality of a child's attachment relationships may bear on the child's preferred *type* of transitional object, attachment security is not known to be associated with whether a child adopts a transitional object.<sup>32</sup>

### III. TRANSITIONAL OBJECTS AS A WINDOW ON THE BIC STANDARD?

The quotes at the inception of this article are from two insightful and incisive custody decisions, both of which recognize the developmental and evidentiary value of transitional objects.<sup>33</sup> The creativity of children adopting TOs consistent within their own culture, experiences, preferences, and family systems means that any parent or caregiver may know what an intimate object to that child is even when that may not be obvious to professionals. It is not gender or biology which defines the power to act insensitively toward a child's animate (pets) or inanimate (fluffy or barbie)

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28. See M. Rose Barlow et al., *Childhood Neglect, Attachment to Companion Animals, and Stuffed Animals as Attachment Objects in Women and Men*, 25 ANTHROZOÖS 111, 116-18 (2012).

29. See generally Jeffrey S. Applegate, *The Transitional Object Reconsidered: Some Sociocultural Variations and Their Implications*, 6 CHILD & ADOLESCENT SOC. WORK J. 38 (1989); Michael K. Hong & Brenda D. Townes, *Infants' Attachment to Inanimate Objects: A Cross-Cultural Study*, 15 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 49, 52, 56-58 (1976).

30. See generally Alison J. Steir & Elyse Brauch Lehman, *Attachment to Transitional Objects: Role of Maternal Personality and Mother-Toddler Interactions*, 70 AM. J. ORTHOPSYCHIATRY 340 (2000).

31. See Keren Fortuna et al., *Attachment to Inanimate Objects and Early Childcare: A Twin Study*, 5 FRONTIERS IN PSYCHOL. 486 (2014); Carole J. Litt, *Theories of Transitional Object Attachment: An Overview*, 9 INT'L J. BEHAV. DEV. 383, 387-88, 393 (1986).

32. See Evelyn Donate-Bartfield & Richard H. Passman, *Relations Between Children's Attachments to Their Mothers and to Security Blankets*, 18 J. FAM. PSYCHOL. 453, 454, 457 (2004); Elyse Brauch Lehman et al., *Soft Object and Pacifier Attachments in Young Children: The Role of Security of Attachment to the Mother*, J. CHILD PSYCHOL. & PSYCHIATRY 1205, 1207 (1992).

33. See *Chomos v. Hamilton*, 2016 ONSC 5208, at para. 69 (Can. Ont.); *McCorvey v. McCorvey*, 2005-174, p. 12-13 (La. App. 3 Cir. 11/2/05); 916 So. 2d 357, 367.

attachments but the intentionality of the act itself by that person with such power. Thus, these cases, and the concepts discussed as it pertains to the BIC standards, are more often present as a window into parental behavior than has been studied or described in the literature.

A. *Fluffy*

The first case cited followed a six-day custody trial and was written by Justice Pazaratz of the Ontario (Canada) Superior Court in *Chomos v. Hamilton*.<sup>34</sup> The court's ruling tells the story of two young parents and Grace, their three-year old-daughter. The parents never married. Following the conclusion of a six-day trial, Pazaratz J. observed that:

Each party sought a sole custody designation in their favour. Neither party proposed any compromise arrangement like joint custody or parallel parenting. Each party took the position that they are the one who needs to have sole decision making authority in Grace's life, quite apart from the mother having primary residence.<sup>35</sup>

The court ultimately held that the mother shall have sole custody and day-to-day decision making authority, including sole and final decision making authority "with respect to all issues in the child's life."<sup>36</sup> The *Chomos* court explained its reasoning in bullet points which could (and should) guide hours of continuing education for lawyers and forensic mental health professionals, emphasizing father's treatment of Grace's stuffed animal called Fluffy:

1. If only he'd [father] been nice to Fluffy.
2. Sometimes in custody trials it's the little things—literally—that help judges figure out what's really going on.
3. Because believe it or not, judges realize that how people present themselves in affidavits and on the witness stand, is not necessarily how they behave when no one is looking.
4. Sometimes the little things can speak volumes.<sup>37</sup>

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34. 2016 ONSC 5208, at para. 5. The trial court's analytic framework, headings, and summary of evidence is worthy of study and adoption even beyond the decision. The trial court's decision is written by paragraphs which are numbered rather than page numbers so citations will follow that format.

35. *Id.* at para. 14(a).

36. *Id.* at para. 131.

37. *Id.* at paras. 1-4. One other issue worthy of note but beyond the scope of this article was the court's analysis of the custody investigator whom the court found generally current in her analysis but that:

Nonetheless, it seems both counter-intuitive—and just plain unfair—that a custody investigator would have the benefit of understanding the mother's conversation with a child, but not the father's [given that father and child conversed in another language].

The story of Grace's transitional object, Fluffy, unfolded long before the marital separation. Father acknowledged on the record a history of selfish, territorial decisions suggesting that he needed Grace to take his side in all things despite the fact that she was just a baby.<sup>38</sup> After a detailed summary of the parents' respective attitudes and thoughts about one another, the court commented on the father's "ability to prioritize this young child's needs over his own emotional vulnerabilities."<sup>39</sup> This analytic framework and associated findings eventually formulated the "Fluffy" section of the decision. The court went on to comment that, "perhaps the most mind-boggling expression of [father]'s hostility and defiance toward [mother] relates to Fluffy: a small, white, stuffed animal Grace became attached to when she was about seven months old."<sup>40</sup>

The mother testified at length about Grace's love for Fluffy and the security that the child took from the stuffed animal's presence.<sup>41</sup> She related how, soon after marital separation, Grace began to exhibit signs of separation anxiety when she spent time with father, so she 'negotiated' with the three-year-old so as to encourage her to take Fluffy with her.<sup>42</sup>

The record showed that when the father arrived at to pick Grace up, he immediately pulled Fluffy from Grace's arm, pushed Fluffy into mother's face, and told her "I have my own stuffed animals."<sup>43</sup> Grace became hysterical in the presence of the adult emotion and due to loss of her beloved stuffed animal, but the father simply left with the child. "Fluffy stayed behind."<sup>44</sup> A second incident occurred after mother sent "an e-mail explaining that Grace was still experiencing separation anxiety and that the

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a. Observation visits are about more than just physical observations.

b. Parent-child interaction—particularly with a two year old—is complex and nuanced. There are many things going on all at once.

c. While non-verbal communication may tell much of the story, any words spoken can reveal so much more.

d. The selection of words. The interplay between statements. Reactions and tonal changes. The child's level of sophistication. Age-appropriate language. Compliance or responsiveness to requests or instruction. Manipulation. The adult's ability to direct or re-direct conversation. Unanswered questions and non sequiturs. These are among the subtle dynamics which can provide important context and elaboration.

e. Words obviously matter. That's why foreign movies have subtitles.

*Id.* at para. 27.

38. *See id.* at paras. 47-48; 61, 67-71.

39. *Id.* at para. 46.

40. *Id.* at para. 67.

41. *See id.* at paras. 67-70.

42. *Id.* at paras. 67-68. In the ideal (or even moderately ideal) parenting behaviors, mother might have alerted father in advance of the anticipated contact that Grace would be carrying Fluffy. The available record suggests that she did not.

43. *Id.* at para. 68.

44. *Id.*

child would be bringing Fluffy with her because she found the stuffed animal emotionally reassuring.”<sup>45</sup> Once again, father tore the toy from the child’s arms, this time throwing Fluffy onto the driveway. Grace was again hysterical.

Justice Pazaratz noted that the parents went to court in 2015 to negotiate a resolution of the Fluffy issue, commenting parenthetically: “Pause for a moment to let that sink in: *They went to court to negotiate a Fluffy resolution.*”<sup>46</sup> As a result, father finally agreed that Fluffy could accompany Grace during visits, but, “it turned out to be a pyrrhic victory for common sense.”<sup>47</sup> The father developed a new routine. When he picked up Grace, she was allowed to bring Fluffy with her but as soon as they got to his car, he tossed Fluffy into his trunk, closed it and drove away.<sup>48</sup> The judge reasoned that, “I suppose technically Fluffy got to come along for the ride.”<sup>49</sup> Unfortunately, “things got even worse” because “whenever Fluffy came out of the Respondent’s trunk, the little stuffed animal smelled terrible. Fluffy gave off a noxious odor, as if dipped in Vicks VapoRub or camphor oil.”<sup>50</sup> The father accused mother of fabricating the complaint. The mother said she finally gave up and stopped sending Fluffy, and judging the child’s distress, being separated from Fluffy was likely less than her distress in the face of the adult conflict and the destruction of her beloved companion.<sup>51</sup>

The custody investigator in *Chomos* incisively opined that, “a special toy or belonging can be very important to a young child, particularly during transitions from one parent to the other. Holding on to a special possession can alleviate a child’s stress.”<sup>52</sup> She said it would be in Grace’s best interest for her parents to allow her to carry a special item like Fluffy with her between homes.<sup>53</sup> The evaluator made a recommendation specific to *Chomos* that ought to be made foundational across all custody cases. She observed that some children “develop a strong attachment to one particular toy, and if that happens it is important for parents to respect the child’s emotional need to have that special toy with them wherever they go.”<sup>54</sup> Crediting the evaluator’s opinion, the judge wrote, “I have no idea why [father] allowed

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45. *Id.* at para. 69.

46. *Id.* at para. 70.

47. *Id.* at para. 71.

48. *Id.*

49. *Id.*

50. *Id.* at para. 72.

51. *Id.*

52. *Id.* at para. 73.

53. *Id.*

54. *Id.*

Fluffy to turn into such a major and unwinnable competition.”<sup>55</sup> He explained this dynamic in a summary worthy of exposition:

- a. He doesn't like the Applicant. I get it.
- b. He doesn't like Grace wearing the Applicant's clothes. So the child has to change into *his* clothes as soon as she gets into his car. I get that too.
- c. It's quite apparent that at every step in this parental turf war, the father sought to imprint his “brand” on the child, and eradicate any reminder of the mother.
- d. But Fluffy was just . . . Fluffy.
- e. Just a harmless little toy of no consequence to anyone . . . except a vulnerable two year old caught in the middle of a bitter custody dispute.
- f. Would it have killed him to just let the child hang on to her toy?
- g. Was it really necessary to make his daughter cry, just to flex his need for control?
- h. In *Coe v. Tope*, 2014 ONSC 4002 (Can LII) this court offered some very simple advice for situations like this: Stop acting like you hate your ex more than you love your child.<sup>56</sup>

Applying the BIC factors applicable to this case, the court determined that sole custody to the mother served the best interests of the child.<sup>57</sup> While the Court found relative equality on other factors, it was section 24(2)(g) of the applicable statute—the ability of each person to act as a parent—upon which the court found mother's behavior reassuring, while father may be “a wonderful father but a terrible separated parent.”<sup>58</sup> The evidence was

55. *Id.* at para. 74.

56. *Id.*

57. *Id.* at para. 116. The factors which the Canadian court was required to consider in carrying out the best interests' analysis are set out in section 24(2), including,

(a) the love, affection and emotional ties between the child and, (i) each person entitled to or claiming custody of or access to the child, (ii) other members of the child's family who reside with the child, and (iii) persons involved in the child's care and up-bringing; (b) the child's views and preferences, if they can reasonably be ascertained; (c) the length of time the child has lived in a stable home environment; (d) the ability and willingness of each person applying for custody of the child to provide the child with guidance and education, the necessities of life and any special needs of the child; (e) the plan proposed by each person applying for custody of or access to the child for the child's care and upbringing; (f) the permanence and stability of the family unit with which it is proposed that the child will live; (g) *the ability of each person applying for custody of or access to the child to act as a parent*; and (h) the relationship by blood or through an adoption order between the child and each person who is a party to the application.

*Id.* at para. 106 (emphasis added). These factors are comparable to the BIC factors adopted in American states. See generally Mary Jean Dolan & Daniel J. Hynan, *Fighting Over Bedtime Stories: An Empirical Study of the Risks of Valuing Quantity Over Quality in Child Custody Decisions*, 38 L. & PSYCHOL. REV. 45 (2014); Lynn Marie Kohm, *Tracing the Foundations of the Best Interests of the Child Standard in American Jurisprudence*, 10 J.L. & FAM. STUD. 337 (2007).

58. *Chomos v. Hamilton*, 2016 ONSC 5208, at para. 114.

“overwhelming that he doesn’t trust the [mother]. He doesn’t respect her as a mother or person” with no interest in promoting the mother-daughter relationship.<sup>59</sup> Furthermore, and despite father’s degree in psychology and work as a therapist, the court found that “he seems to have very little insight into human dynamics or relationships.”<sup>60</sup> He “persisted in defending every bad parenting decision as a good decision.”<sup>61</sup> The court observed that the father is not a victim but “a bully. A very sophisticated, well-spoken control freak with a grudge” none of which would matter much if these characteristics did not “impact on Grace. But they do.”<sup>62</sup> As the court concluded quite cogently, “[t]he inability to compromise. The total lack of empathy. The selfishness and deception. The thinly veiled vindictiveness toward [mother]. Giving any amount of decision making authority to a parent with these destructive predispositions would be a recipe for disaster.”<sup>63</sup> In the next case, a similar set of stakes and behaviors arose in a post-divorce modification matter but with other factors no less troubling and consequential for a child.

### B. *The Barbie-Sized Doll*

The 2005 Louisiana judgment in *McCorvey v. McCorvey*<sup>64</sup> speaks further to the value of understanding transitional objects in the context of

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59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.* “Technologies such as telephone, e-mail, instant messaging, and Skype, or other Webcam applications, provide the nonresident parent the opportunity to play a greater role in the child’s day-to-day life. However, virtual parenting is no substitute for regular, physical contact between a parent and child.” Andrea Himel et al., *1-800-Skype-Me*, 54 FAM. CT. REV. 457, 460 (2016). In the context of discussing visitation with incarcerated parents, critics observe that “[v]irtual visitation is not necessarily the best form of visitation for children below the age of fourteen and is definitely not the best form of visitation for children under the age of seven . . . . Children do not receive the same connection with parents unless there is physical interaction.” Safia Fasah, *Pat-Downs but No Hugs: Why Prison Visitation Protocol Should be Changed to Help Keep Familial Structures Intact*, 56 FAM. CT. REV. 135, 143 (2018). Like Fluffy, however, a child’s access to technology-mediated representations is always subject to the proximal parent’s control. Unlike Fluffy, technology-mediated representations are additionally limited by fallible hardware (e.g., cell phones that go uncharged) or parents who may use technology for surveillance or to create additional stress and anxiety for a child.

64. 2005-174, p. 12-14 (La. App. 3 Cir. 11/2/05); 916 So.2d 357, 366-67. Although beyond the scope of this article, in reading this case and reviewing literature concerning children born of inter-racial families and the acquisition of racial and cultural identity by children, the authors urge caution when interpreting, in isolation, a parent’s response to TOs which may trigger a negative response based upon experience with racism or other explicit or implicit biases. See JOE R. FEAGIN & DEBRA VAN AUSDALE, *THE FIRST R: HOW CHILDREN LEARN RACE AND RACISM* 32-34 (2001); ILAN KATZ, *THE CONSTRUCTION OF RACIAL IDENTITY IN CHILDREN OF MIXED PARENTAGE:*



contested custody litigation, with the added complexity and dimensions of race and behaviors which the trial court reported as verbally aggressive and threatening over time and despite efforts to blunt the conflict. As in *Chomos*, the *McCorvey* litigation proceeded during an only child's toddler years and, as in *Chomos*, the court found one parent's disregard of a child's transitional object evidence directly relevant to the pending BIC decision:

Darian was a little over two and a half years old at the time and was clutching one of her favorite dolls from a Disney animation. The record indicates that the doll was a Caucasian, "Barbie"-sized doll, representing Beauty from the "Beauty and the Beast" animation. Mr. McCorvey had previously asked Ms. McCorvey why Darian had this "big ole white doll." At the time of this exchange, Mr. McCorvey took the doll away from his little girl and discarded it under the carport. The grandmother came out of the house with Darian's overnight bags, saw the child in distress, saw and retrieved the doll, and asked whether Darian intended to take the doll with her. Darian said yes, but Mr. McCorvey objected, saying that she could not have "those kinds of dolls" at his house. The child began crying and reaching for her doll, and the custody exchange was made very difficult.<sup>65</sup>

The court noted that on a subsequent occasion for visitation, Darian had various toys of her choosing for the weekend. This time, Mr. McCorvey objected to a miniature playhouse that depicted white children inside. Over the child's protests and the mother's efforts to make the transition easier for Darian by giving the toy back to her and then asking Mr. McCorvey's wife to take it in the car, Mr. McCorvey repeatedly took the toy, even from his wife, and made a show of discarding it under the carport.<sup>66</sup>

Despite repeated efforts to try and resolve the case between these two parents, the trial court held a trial and found that:

[Father] probably did and does have problems with his daughter playing with "white dolls." [He] does not have his child's best interest at heart in his actions and attitudes thus far, and it is obvious that he wishes to dominate her every thoughts [sic], words, and deeds, leaving no room for the more responsible/balanced upbringing that the mother seeks. The Court

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MIXED METAPHORS 190-91 (1996). In the *McCorvey* case, there were many other factors beyond the TO which influenced the trial court's decision on custody. For a recent and important story of personal experience and research on explicit and implicit bias, see JENNIFER L. EBERHARDT, *BIASED: UNCOVERING THE HIDDEN PREJUDICE THAT SHAPES WHAT WE SEE, THINK, AND DO* (2019).

65. *McCorvey*, 916 So. 2d at 367.

66. *Id.*

senses that the defendant is more interested in the “almighty I” than he is in “what’s best for his little baby girl.”<sup>67</sup>

As in *Chomos*, a mental health professional conducted an evaluation and subsequently testified that “moving from one family to the other, the child is more comfortable if she can take items, clothes, her favorite tennis shoes, her favorite toys, whatever she’s into playing at that moment, to the other home. It facilitates that. We call that transitional objects.”<sup>68</sup> The evaluator was “distressed” that she heard so much testimony about the child “crying when she left and the difficulty that they have in separating from the mother.”<sup>69</sup> She properly explained to the trial court that “[i]t’s not about white dolls or black dolls. It’s more about all these important psychological processes that are being established.”<sup>70</sup>

The psychologist noted further that the exchange point for children is not the time for the adults to sort out their problems.<sup>71</sup> She opined that “the child should take transitional objects, whatever she is [emotionally] close to at that point in time, to make her feel more comfortable and secure.”<sup>72</sup> The father’s apparent disregard for expert opinion and the mother’s child-centered recommendations prompted the court to view his actions as ill-suited to the child’s needs. As in *Chomos*, the *McCorvey* court ultimately decided that the father’s “escalating pattern of behavior”<sup>73</sup> and, as weaved throughout the decision, lack of empathy, insight into the child’s needs, and unwillingness to recognize the emotional comfort the child took from her transitional objects (regardless of color and provenance), warranted granting sole custody to the mother.

#### IV. RECOGNIZING TRANSITIONAL OBJECTS AS CUSTODY-RELATED

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67. *Id.* at 371-72. The *McCorvey* court commented: “In this Judge’s thirty years as a practicing attorney and almost ten years on the bench, I cannot recall any domestic litigation which has risen to the level of hostility such as I have witnessed herein.” *Id.* at 371.

68. *Id.* at 375.

69. *Id.*

70. *Id.*

71. *Id.* at 376.

72. *Id.* at 376.

73. *Id.* at 378. See *State v. Nelson*, 803 A.2d 1, 45 n.8 (N.J. 2002) (citing American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 652 (4th ed.1994) [hereinafter *DSM-IV*] (Borderline Personality Disorder: “Some individuals develop psychotic-like symptoms (e.g., hallucinations, body-image distortions, ideas of reference, and hypnagogic phenomena) during times of stress. Individuals with this disorder may feel more secure with transitional objects (i.e., a pen or inanimate possession) than in interpersonal relationships.”).

## VARIABLES

Together, *Chomos* and *McCorvey* illustrate at least three critical points that evaluators and other professionals, counsel and the courts should consider in the context of custody-related litigation. First, a child's possessions are often far more than trivial, interchangeable things, no matter how they may appear through adult eyes. Many such possessions are magically imbued with emotional meaning by association with caregivers, such that the presence of these objects can be reassuring and their absence painful to the extreme of trauma. The most putrid, threadbare, and stained stuffed animal may be a child's most prized possession in that it invisibly carries an absent caregiver's affection, acceptance, and emotional security. A soiled tee-shirt can carry the reassurance of a parent's scent. A skin-greening piece of faux jewelry gifted by a caregiver can become more precious than food. We, as professionals and decision makers, must respect and empower children's use of these transitional objects by reference in parenting plans and associated orders.

Second, whether and how caregivers recognize and support the child's access to transitional objects is concrete, measurable evidence of that adult's capacity for sensitive and responsive care. The parents in *Chomos* and *McCorvey* who supported their respective toddlers' emotional needs by encouraging access to transitional objects were demonstrating the kind of selfless care that speaks directly to the best interests of the child. By contrast, those parents who act to prohibit, reject, damage, or demean a child's beloved transitional object, are demonstrating a selfish, controlling and even alienating behavior directly counter to the BIC.

Indeed, in the same manner that the law has come to recognize Parent A's unwarranted efforts to undermine a child's relationship with Parent B as contrary to the child's best interests and constituting alienating behaviors,<sup>74</sup> we must begin to consider that Parent A's efforts to demean or destroy the symbols that represent Parent B as constituting alienation-by-proxy. With regard to the two cases at issue here, if we genuinely grasp that Fluffy served

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74. See Kate Templer et al., *Recommendations for Best Practice in Response to Parental Alienation: Findings from a Systematic Review*, 39 J. FAM. THERAPY 103 (2017). Citation to research related to parental alienation or parental alienation syndrome is not an endorsement of this theory as it pertains to an empirically-based diagnosis. All states include as a BIC factor cooperation and interference with parenting relationships so behaviors which implicate that factor are relevant. For example, the Supreme Judicial Court of Maine presumes:

[T]hat once [the court's] order has been issued, parents will abide by it peaceably and work cooperatively to make it serve the best interests of their children, and that "no court should attempt to accommodate any continuing animosity of the parents." The court "must seek not merely to preserve the child from harm, but discern 'as a wise, affectionate and careful parent' what custody arrangements will further the child's best interest."

Cloutier v. Lear, 691 A.2d 660, 663 (Me. 1997) (citations omitted).

as Grace's connection to her mother while they were apart, then we must acknowledge that the father's acts to reject and destroy Fluffy were to Grace as good as symbolically rejecting and destroying her mother.<sup>75</sup> Of course, a caregiver's choice to allow or prohibit a child's access to a transitional object must not, in and of itself, be taken as conclusive evidence of his or her capacity to care, express empathy and support. These acts are clues to a larger picture, precisely in the manner that Judge Pazaratz understood father's destruction of Fluffy as the tip of a larger caregiving iceberg.

Third and finally, respect for the place and meaning of transitional objects in family law opens the door to consider their creation as a family law intervention. Although the most emotionally evocative and palliative transitional objects are likely those that spontaneously emerge in the child's world, it's often therapeutic to catalyze, pre-empt or assist this process. Using inexpensive craft materials or repurposing existing possessions (e.g., an old wallet or necklace), parents can proactively craft a transitional object for or with a child. Child and family therapists can assist parent-child dyads to create and exchange trinkets with the same intent.<sup>76</sup> The specific form that the transitional object takes will be idiosyncratic but imbuing each with a bit of magic in the form of a parent's kisses or a lock of hair sealed under transparent tape is usually welcome. The ease and immediacy of digital photography, sound and video recording, make for innumerable variations well-suited to a more emotionally mature child than the old-school idea of a blanket or a stuffed animal. With less emotionally mature children, the co-creation or gifting of a transitional object can be facilitated by accompanying rituals and stories.

When tangible transitional objects are eschewed as cause for embarrassment, as vulnerable to confiscation by a vindictive parent, less conspicuous alternatives are possible. In one memorable instance, Mother made a habit of spritzing her familiar perfume on her ten-year-old's night clothes before separating, creating for the child a subliminal and reassuring connection at bedtime. Cooperative, separated co-parents can each draw (or audio or video record) a series of very brief messages of reassurance for their child to be held in escrow in the child's other home in case of future need. The child's independence is served and the opportunity for adult conflict is minimized when Father can salve his daughter's separation anxiety by producing a symbol of Mother's affection as the need arises. Finally, some special needs (e.g., anxious or autistic spectrum disorder) children's reliance on familiarity can sometimes be accommodated through the use of

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75. See Garber, *supra* note 25.

76. See Benjamin D. Garber, *Conceptualizing Visitation Resistance and Refusal in the Context of Parental Conflict, Separation and Divorce*, 45 FAM. CT. REV. 588 (2007).

transitional objects. Cooperative but separated co-parents can transfer a child's collapsible cardboard clubhouse or beloved bed-tent between homes so as to minimize the child's experience of change regardless of street address.

## V. FUTURE ISSUES FOR CONSIDERATION

### A. *Is Technology-Mediated Contact a Transitional Object?*

Virtual visitation (e.g., phone calls, Skype, FaceTime) falls into a gray area between transitional object and fleeting reunion. On one hand, virtual visitation might help the child to better manage separation.<sup>77</sup> On the other hand, virtual visitation does not draw on a child's representation of or association to the absent parent in that that parent is present, albeit removed from all but visual and auditory experience. Virtual visitation furthermore falls outside our usual understanding of transitional objects in that it does not provide the child with a talisman or symbol of the absent parent that can be referenced in times of need. Technology-mediated representations (e.g., saved text messages, saved voice messages, and recorded video clips akin to a handwritten note or a photo taped inside a lunchbox), however, do qualify as transitional objects to the extent that they are portable and communicate the absent caregiver's affection, do not require real time interaction, and remain accessible to the child in acute times of need.

As noted in the literature and case law, it is "highly unlikely that a voice on the telephone or a grainy picture on a computer will be any substitute for a flesh and blood father sitting him on his lap or kissing him goodnight."<sup>78</sup> Nonetheless, we acknowledge that rapid changes in early childhood access

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77. Joanne Tarasuik & Jordy Kaufman, *When and Why Parents Involve Young Children in Video Communication*, 11 J. CHILD. & MEDIA 88-89 (2017). The issue of parents recording a child's conversations with the other parent is an issue which occurs when using electronic communications and one which should be addressed clearly. In *Griffin v. Griffin*, one parent presented the following argument before the court:

Cristie argues that Glenn violated the Interception of Wire and Oral Communications Act, 15 M.R.S. § 710, when he intentionally recorded, and disclosed to others, phone conversations between Cristie and the parties' minor daughter, thus intercepting "oral communications" without the consent of either party to the call, and that no exception to 15 M.R.S. § 712 applied to allow Glenn to consent vicariously on behalf of their daughter to record those conversations. She argues that Glenn's recordings were therefore inadmissible at trial pursuant to 15 M.R.S. § 713 and that the court erred when it denied her motion in limine, allowed the recordings to be played at trial, and relied on those recordings in the final divorce judgment, contempt order, and postjudgment orders. Cristie does not dispute that she made ugly, disparaging comments about Glenn to their six-year-old daughter, or that she used the phone calls to manipulate and distress the child.

2014 ME 70, 92 A.3d 1144, 1148.

78. Himel et al., *supra* note 63, at 463-64 (quoting *A.D.P. v. T.E.W.*, 2005 CanLII 22, para. 23 (N.S.F.C.)).

to technology, associated neurological adaptations, and the shifting meaning of what it means to be social together, may require reconsideration of whether virtual visitation may soon come to serve children as transitional objects.<sup>79</sup>

*B. Are Pets Transitional Objects?*

Fido or Furball may become a child's constant source of unambiguous nurturance, warmth, and support.<sup>80</sup> The presence of a pet—particularly a dog—has been shown to decrease cortisol levels in children as compared to the presence of a friendly adult or a toy dog.<sup>81</sup> Research has shown that pets “can facilitate the development of human attachment relationships and can act as another attachment figure in the absence or disruption of human attachment relationships, such as parental divorce.”<sup>82</sup> Pets, like therapists and grandparents and coaches and neighbors and siblings, can thereby serve as a child's emotional “port in the storm”; that is, a secure base or relationship anchor to relieve some of the anxiety associated with parental conflict, separation, and divorce.<sup>83</sup>

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79. See Sharon E. Fox et al., *How the Timing and Quality of Early Experiences Influence the Development of Brain Architecture*, 81 *CHILD DEV.* 28, 36 (2010) (“Finally, for the millions of children around the world who begin their lives in adverse circumstances, we should be mindful of what is known about sensitive periods and act with alacrity to improve the lives of these children before neural circuits become well established and, thus, difficult to modify.”); Debra Lee Oh et al., *Systematic Review of Pediatric Health Outcomes Associated with Childhood Adversity*, 18 *B.M.C. PEDIATRICS* 83, 83 (2018) (“Through a mechanism that is influenced by genetic, social, and biological factors, exposure to childhood adversity has been linked to the dysregulation of the neuroendocrine immune circuitry, which results in alterations of brain architecture and other organ systems during sensitive periods of development.”); Brigette Vittrup et al., *Parental Perceptions of the Role of Media and Technology in Their Young Children's Lives*, 14 *J. EARLY CHILDHOOD RES.* 43, 43 (2016) (“Overall, parents showed positive attitudes toward media, to the extent that they believed media exposure to be vital to children's development, and many disagreed with recommendations from expert sources regarding age-appropriate screen time.”).

80. See Roxanne D. Hawkins et al., *Childhood Attachment to Pets: Associations Between Pet Attachment, Attitudes to Animals, Compassion, and Humane Behaviour*, 14 *INT'L J. ENVTL. RES. PUB. HEALTH* 490 (2017); N. Maharaj et al., *The Human–Canine Bond: A Sacred Relationship*, 18 *J. SPIRITUALITY MENTAL HEALTH* 76, 76-78 (2016); Elizabeth B. Strand, *Interparental Conflict and Youth Maladjustment: The Buffering Effects of Pets*, 7 *STRESS, TRAUMA, AND CRISIS* 151, 164 (2004).

81. See generally HENRI JULIUS ET AL., *ATTACHMENT TO PETS: AN INTEGRATIVE VIEW OF HUMAN-ANIMAL RELATIONSHIPS WITH IMPLICATIONS FOR THERAPEUTIC PRACTICE* (2013).

82. Hawkins et al., *supra* note 80, at 2.

83. One of the authors has written extensively about the benefits to children from these “ports.” See BENJAMIN D. GARBER, *DEVELOPMENTAL PSYCHOLOGY FOR FAMILY LAW PROFESSIONALS: THEORY, APPLICATION AND THE BEST INTERESTS OF THE CHILD* 268-71 (2009); BENJAMIN D. GARBER, *KEEPING KIDS OUT OF THE MIDDLE: CHILD-CENTERED PARENTING IN THE MIDST OF CONFLICT, SEPARATION AND DIVORCE* 255-55 (2008); BENJAMIN D. GARBER, *Providing Effective, Systemically Informed, Child-Centered Psychotherapies for Children of Divorce: Walking on Thin*

But these secondary attachment figures are not transitional objects in that they may not communicate comfort and reassurance by association to an absent caregiver, unless they do. When Billy takes Mother's puppy for the weekend to Father's home, the dog may well be both a secondary attachment figure and a transitional object. Fido's cuddly warmth and wet licks and playful love are comforting in and of themselves, but also carry with them Mother's affection by association. Cuddling with Fido helps Billy manage his separation anxiety, in part because Fido represents his absent Mother's love. This exception might not be worth noting were it not for the literature that discusses behavior that might be identified as "alienation-by-proxy," that is, the dynamic at work when one adult's hatred of another is extended to otherwise benign objects by association, including "pets of the rejected parent."<sup>84</sup>

### C. *When are Transitional Objects Developmentally Inappropriate?*

In the typical course of development, the toddler's ragged and beloved teddy bear is gradually and spontaneously retired from use. Winnicott refers to this as the process of being "decathected," the weakening or extinction of the emotional association between prop and attachment figure.<sup>85</sup> There are occasions, nonetheless, when transitional objects overstay their welcome socially, even if they remain valuable to the child emotionally. These are the children who refuse to attend sleepovers because they're embarrassed to still need "blankey" at bedtime, or the children who resist kindergarten because the school forbids the import of toys from home. In some instances, they are simply the stories of children whose parents have decided that the pragmatics of assuring that child and prop are never separated are too demanding, or that continuing reliance on that prop somehow does harm.

If and when a transitional object becomes awkward or unwelcome, creative solutions come into play. Rather than carry Fluffy, a few threads cut from her synthetic fur might suffice. Rather than cling to blankey, a corner of the cloth secreted in a pocket might communicate the desired comfort less obtrusively. Rather than risk losing Teddy at school, a photo of Teddy taped in the child's cubby may be enough.

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*Ice*, in *WORKING WITH ALIENATED CHILDREN AND FAMILIES: A CLINICAL GUIDEBOOK 5* (Amy J. L. Baker & S. Richard Sauber eds., 2013).

84. Barbara Jo Fidler & Nicholas Bala, *Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums*, 48 FAM. CT. REV. 10, 17 (2010).

85. See Winnicott, *supra* note 12, at 91.

#### D. *Might Teddy be a Mole?*

A “mole,” in the language of twentieth century spy novels, is a deep-cover agent recruited to provide information from behind enemy lines.<sup>86</sup> Any discussion of transitional objects among family law professionals inevitably raises the question of whether Teddy might be Parent A’s means of spying on Parent B, no matter the transitional object’s anxiolytic value to the child who innocently carries it back and forth.

This seemingly cynical inquiry is, in fact, a realistic assessment of both the state of technology and the lengths to which some parents will go to “win” the custody battle. Nanny cams and cell phones secreted where Winnie-the-Pooh’s stuffing ought to be are ever-more the subject of endless contempt motions and late night police calls as evident in endless blog posts and internet-based legal opinions.<sup>87</sup> Court opinions on these matters are as yet few and far-between, but are expected to become more frequent as the technology becomes more and more common and undetectable. For now, the courts are generally taking the position voiced by Judge Sherr in *Leblanc v. Leblanc*: “The court ordered that the maternal grandparents not video or record the parents’ time with the child. This was in response to such video evidence recorded by the maternal grandparents on their nanny-cam that was excluded on the motions.”<sup>88</sup>

#### E. *Child Custody Evaluations and Transitional Objects*

The law and best practices require that child custody evaluations (CCE) speak first and foremost to the child’s social and emotional needs and to the caregiver’s respective abilities to serve those needs.<sup>89</sup> The present discussion

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86. The term was introduced by JOHN LE CARRÉ in his 1974 novel TINKER, TAILOR, SOLDIER, SPY. Although the term has not yet been popularized in the family law literature, the idea that one parent can enlist a child to covertly provide information while in the other parent’s care is often discussed among the detrimental dynamics often seen among adultified children. See Benjamin D. Garber, *Parental Alienation and the Dynamics of the Enmeshed Parent-Child Dyad: Adultification, Parentification and Infantilization*, 49 FAM. CT. REV. 322, 325-27 (2011). For reference by a court, see this analysis: ‘the children were overly involved in their parent’s issues and were often manipulated to spy on their mother.’ *R. v. Ibrahim*, 2010 ONCJ 37, para. 7 (Can. Ont. C.J.).

87. As brief examples, see *Can I Use a Video Recording From a Nanny Cam During a Child Custody Case*, AVVO (Feb. 24, 2015), <https://www.avvo.com/legal-answers/can-i-use-a-video-recording-from-a-nanny-cam-in-co-2073790.html>, and *Is Footage Recorded on a “Nanny Cam” Admissible as Evidence?*, SHAW LAW FIRM PC (Feb. 8, 2018), <https://www.shawlaw.com/footage-recorded-nanny-cam-admissible-evidence/>.

88. *LeBlanc v. LeBlanc*, 2018 ONCJ 499, para. 11 (Can. Ont. C.J.).

89. For a recent example of the relevance and reliability of testing, compare Benjamin D. Garber & Robert A. Simon, *Individual Adult Psychometric Testing and Child Custody Evaluations: If the Shoe Doesn’t Fit, Don’t Wear It*, 30 J. AM. ACAD. MATRIM. L. 325 (2018), with Sol R. Rappaport et al., *Psychological Testing Can Be of Significant Value in Child Custody Evaluations:*



suggests that CCEs must take a developmental perspective, capturing not only a snapshot of the system in the present, but anticipating the child's developmental trajectory into the future. A child's use of transitional objects and the parents' attitudes toward these objects can provide compelling evidence relevant to the court's specific questions and circumscribed by jurisdictional guidelines and best practices. CCEs do not occur in a vacuum but are part of the aggregation and transfer of information to a court to apply to a specific form of litigation.<sup>90</sup>

In this context, transitional objects provide the examiner with a window into the child's typically ambivalent movement toward healthy autonomy and means of coping with the acute family transition. For example, inquiry into the child's coping strategies, capacity for self-regulation, and resilience must include consideration of when and where and how and why the child employs his or her idiosyncratic variant of Fluffy or Barbie. In some instances, the examiner is wise to actually interview Fluffy, both as a means of validating the child's world and in order to better access the child's wishes, fears, needs and strengths. It is the first author's experience that young children make very impressive ventriloquists in this situation.

By extension, the parents' perspectives on the child's transitional object can also provide valuable insight into caregiving empathy, sensitivity, and parenting and co-parenting practices. The simple mechanics of cooperating to assure that the child has her Teddy bear speak to the co-parents' capacity for child-centered cooperation. The parents' attitudes about when and how a child's transitional object should be accessible will speak to their respective developmental expectations and social sensitivities. Each parent's real or imagined capacity to soothe the child when the beloved item is misplaced, lost, or destroyed may be among the most demanding tests of the parent-child relationship. In particular, parental behaviors such as those described in *Chomos* and *McCorvey* should alert examiners to look very closely at the ways in which that parent supports the child's relationship with her other parent and nurtures her healthy growth toward autonomy.

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*Don't Buy the "Anti-Testing, Anti-Individual, Pro-Family Systems" Woozle*, 30 J. AM. ACAD. MATRIM. L. 405 (2018).

90. See William T. O'Donohue et al., *Controversies in Child Custody Evaluations*, in PSYCHOLOGICAL SCIENCE IN THE COURTROOM: CONSENSUS AND CONTROVERSY 290 (Jennifer L. Skeem et al. eds., 2009) ("Custody evaluations often include multiple constructs (e.g., attachment, abuse potential, parenting skills) that are discussed across different time periods (past, present, future); an assessment instrument might be adequate for one of these tasks or time periods but poor at another."); Benjamin D. Garber, *The Chameleon Child: Children as Actors in the High Conflict Divorce Drama*, 11 J. CHILD CUSTODY 25, 34 (2014) ("Custody evaluation and associated judicial decisions require a comprehensive analysis of all levels of the family system.").

## VI. CONCLUSION

Fluffy the stuffed animal may be pungent and spilling her cottony innards. She may have lost an eye or a limb and be more patches than original cloth, but for all of her scars and scratches she may still be a powerful part of a child's emotional existence. It is time that family law professionals began to formally and uniformly give Fluffy her due.

In order to serve the needs of any child, mental health and family law professionals must consider those conditions that fuel and sustain the child's sense of security. With this in mind, the professional literature has appropriately focused on assessment and intervention intended to facilitate the quality of parent-child relationships. Unfortunately, the powerful role of transitional objects has often been neglected in this discussion. The present paper defines the concept of the transitional object, applies it to high conflict divorce dynamics, and emphasizes some of the many and varied ways in which these developmentally adaptive tools can be used in support of the child's growth toward healthy autonomy and management of the stresses inherent in family transition.

If our family courts are to genuinely serve the best interests of each child, then family law professionals must begin to account for the role of transitional objects among those factors relevant to the future allocation of parenting rights and responsibilities. A developmentally informed parenting plan must recognize and empower children's access to those idiosyncratic objects and sensory experiences that effectively communicate nurture-by-proxy. Much as our courts may be caught up in understanding how today's rapidly evolving technology might ease separation and transition difficulties, nothing can ever replace the simple magic of a beloved blanket, a tattered and worn Teddy bear, or that special Barbie doll.