No. 01-10-00963-CV
In the First Court of Appeals
Houston, Texas



JESSICA BHAN

APPELLANT

v.

BRYAN JAMES DANET AND
WILLIAM TODD KRANZ

APPELLEES

On Appeal from the 313th District Court
Harris County, Texas
No. 2007-60263

# APPELLEES' MOTION FOR REHEARING

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This Court should grant rehearing because the new panel opinion still does not consider evidence in the record that supported the jury's verdict.[1] On rehearing, this Court should affirm the judgment appointing Appellees Todd Kranz and Bryan Danet as joint managing conservators.[2]

## I. The new opinion does not address Todd and Bryan's argument that Jessica's actions will significantly impair Joey's emotional development if he is removed from their home.

In its new panel opinion, the Court held that the evidence was legally insufficient to support the jury's finding that removing Joey from the only home he has known since he was seven-months old would significantly impair his emotional development.[3] The Court based its conclusion on its determination that there was no evidence connecting Jessica's conduct with the harm that will result from Joey being removed from Todd and Bryan's home.[4]

In their motion for rehearing after the panel's original opinion, Todd and Bryan explained that there is evidence that Jessica's conduct

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[1] Because the panel vacated its April 12, 2012 judgment and issued a new opinion, this second motion for rehearing is proper. TEX. R. APP. P 49.5.

[2] Appellees Todd Kranz and Bryan Danet will be referred to as "Todd" and "Bryan," Appellant Jessica Bhan as "Jessica," and Joseph Aaron Bhan as "Joey."

[3] Op. at 23-24 (App. A).

[4] *Id.*

will significantly impair Joey's emotional development.[5] This Court did not address that evidence in its new panel opinion. This Court should grant rehearing to address that evidence and, after doing so, affirm the judgment appointing Todd and Bryan as joint managing conservators.

## II. The evidence supports the jury's finding that Jessica's actions will be the cause of Joey's emotional development if he is removed from their home.

This Court has held that a jury can conclude that "separation of the child from the only person who has consistently cared for [him] for the majority of [his] life would 'significantly impair' the child's emotional development."[6] And this Court has recognized that a jury can reasonably conclude that removing a child "from 'the only home he has known' would significantly impair his emotional development."[7]

There is evidence in the record that Jessica's specific actions are what would cause significant impairment to Joey's emotional

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[5] May 12, 2012 Motion for Rehearing at 2-4.

[6] *In re K.R.P.*, 80 S.W.3d 669, 677 (Tex. App.—Houston [1st Dist.] 2002, pet. denied).

[7] *McPherson v. Hollyer*, No. 01-09-00619-CV, 2011 WL 1632163, *6 (Tex. App.—Houston [1st Dist.] Apr. 28, 2011, no pet.) (mem. op.) (quoting *In re R.T.K.*, 324 S.W.3d 896, 905 (Tex. App.—Houston [14th Dist.] 2010, pet. denied)); *see also In Interest of Rodriguez*, 940 S.W.2d 265, 274 (Tex. App.—San Antonio 1997, writ denied).

development if he were removed from Todd and Bryan's home. Jessica's actions will be the cause in two separate ways.

First, Jessica's actions and omissions are the reason that Joey has been living with Todd and Bryan since he was seven-months old. Jessica essentially abandoned Joey when she did not go to the police station to pick him up—as she was told she could do.[8] Instead, she placed more value on doing cocaine with an ex-inmate she just met than on her relationship with her infant.[9] The natural course of Jessica's failure to get her son is that he was placed in the custody of people who would care for him. So the close bond that Joey has with Todd and Bryan is a direct result of Jessica's decision to not get her son when she could have done so.

Second, Jessica told the jury that—if given sole managing conservatorship—she will take actions that will make the custody transfer as painful and distressing as possible for Joey. Jessica testified that if the jury had ruled for her, she would have left the courthouse

[8] 4 RR 263.

[9] 4 RR 102-105.

and immediately taken Joey to Wisconsin.[10] So Jessica told the jury that her plan was to immediately remove Joey from the only home he has ever known without any opportunity to process what was happening. Instead of agreeing to a plan that would slowly introduce Joey to the idea that he was leaving Todd and Bryan—and their sons who he considered his brothers—Jessica said she would "go right back to Wisconsin with Joey and take him from Houston."[11] The jury could have found that Jessica's sworn intention to immediately take Joey back to Wisconsin would cause significant impairment to his emotional development.

The jury, therefore, had sufficient evidence on which to base its verdict that Jessica's actions and inactions would be the cause of Joey's significant impairment to his emotional development if Jessica were appointed sole managing conservator.

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[10] 4 RR 208 (Q. Are you asking this jury to give you Joey tomorrow? If this case ends tomorrow, are you wanting to take him right back to Wisconsin? A. Yes, ma'am. I am. Yes, jury, I am."); 4 RR 209 ("Q. You want to go right back to Wisconsin with Joey and take him from Houston? A. Yes….").

[11] 4 RR 209.

## III. This Court should grant rehearing and affirm the judgment appointing Todd and Bryan as joint managing conservators.

This Court should grant rehearing and issue an opinion affirming the judgment appointing Todd and Bryan as joint managing conservators. At a minimum, this Court should address Todd and Bryan's argument that these specific acts of Jessica would cause Joey significant impairment to his emotional development.[12]

Respectfully submitted,


/s/ David George

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January 2, 2013

[12] *See* TEX. R. APP. P. 47.1 ("The court of appeals must hand down a written opinion that is as brief as practicable but that addresses every issue raised and necessary to final disposition of the appeal.").

## CERTIFICATE OF SERVICE

I certify that on January 2, 2013, I served a copy of the foregoing document upon the following counsel of record via certified mail and e-mail:

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## CERTIFICATE OF COMPLIANCE

This motion contains 940 words, excluding the caption, signature blocks, and certificates. This motion was prepared using Microsoft Word 2002 in 14 point (12 point in footnotes) Century Schoolbook (Arial headings) font.

/s/ David George
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