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STATE OF MICHIGAN
IN THE SUPREME COURT

In the Matter Of J.L. GORDON, Minor

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S Ct. NO. _____ 8/16/11
COA NO. 301592
L. CT. NO. 2008-746988-NA

MICHIGAN DEPARTMENT OF HUMAN SERVICES,
Petitioner-Appellee

v.

COURTNEY HINKLE,
Respondent-Appellant
---/

Oakland
L. Gorcyca

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143673

APPL

9/27

FP

NOTICE OF HEARING

APPLICATION FOR LEAVE TO APPEAL

PROOF OF SERVICE

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APPEAL OF JUDGMENT AND RELIEF REQUESTED

Respondent/Appellant Courtney Hinkle appeals from an unpublished opinion of the Michigan Court of Appeals dated August 11, 2011, affirming the Order of the Sixth Judicial Circuit terminating her parental rights to her son,

The most salient issue raised in this appeal is the blatant failure to comply with the Indian Child Welfare Act (ICWA), 25 USC 1901 et seq. by first the Department of Human Services as petitioner, then the trial court from the minute it issued an Order To Take Into Custody without ensuring that the Children's Protective Services worker had investigated potential American Indian heritage, and finally by the Michigan Court of Appeals. At the preliminary hearing, the Appellant informed the Intake Referee that her family belonged to the Saginaw Band of the Chippewa Indians, and yet the record to date is totally devoid of any documentation that the tribe had been served with notice. Even at the oral argument in the Michigan Court of Appeals, Judge Wilder asked the Prosecutor where in the record was there proof of compliance with the notice requirement of ICWA. The response from the Oakland County Prosecutor was that DHS stated to the Court that the tribe had been served. Ironically, Judge Martha Anderson at a pretrial hearing had not been satisfied with an oral representation by DHS of ICWA compliance and informed the Department that there needed to be proof filed with the Court. Neither the legal nor social file of this case reflects any written proof of compliance. After the case was transferred to Judge Gorcyca, the lack of compliance was never pursued by the trial court.

Two of the three judges involved in the current ICWA case pending before this Honorable Court, **In re C.I. Morris**, COA Case Number: 299471, SCt Case Number: 142759. were on the panel in the instant case.

Rather than remand the matter to the trial court to ensure tribal notification, the Court of Appeals found without any verification that notice had been given. The Prosecutor had argued that mother had waived the issue; no case law allows a parent to waive notice to an American Indian tribe should the child involved in the child protective proceeding be a potential member.

To avoid the issue that the pending **Morris** case, supra, presents to this Honorable Court regarding conditionally affirming termination without proof of compliance with ICWA, the Court of Appeals simply created a new remedy. Violations of ICWA are rampant in Oakland County, and were especially egregious in the Gordon matter given that the mother named not just the identity of the tribe but of a specific band of that tribe, to which both her biological and adoptive mother belonged.

The Appellant also argues that the Court of Appeals not only needed to ensure compliance with ICWA prior to reaching a decision on the issues of statutory grounds, reasonable efforts toward reunification, and best interests of the minor, but even if the child turns out not to be tribal-eligible, the trial court erred. For example, although the agencies involved were receiving federal funds pursuant to 72 USC 675(4) to transport the child home for visits, the child placing agencies blatantly refused to faciliate reunification as the mother received bus tickets to visit her child in northern Michigan that were only good in the Detroit metropolitan area. No wonder MIchigan has a track record of flunking federal **Title IV-E** audits.

The issues involved in this Gordon matter are those of significant public interest as the multiple violations of **Title IV-E** in the past several years along have resulted in fines assessed to the State of Michigan of millions of dollars and led to the implementation of a Court Improvement Project. Further, this Honorable Court by accepting the **Morris** case, supra, after a remand to the Court of Appeals, has already expressed its concern about violations of the Indian Child Welfare Act by the trial courts and the continual allowance of those violations by the Michigan Court of Appeals. Accepting this Application for Leave will send a message that child protective proceedings must adhere to statutes, that the constitutional rights of parents cannot be denied and that denial deemed "harmless," and that the taxpayers do not have to continually pay for the malfeasance and ignorance of the Department of Human Services.

STATEMENT OF JURISDICTION

Courtney Hinkle appealed of right, pursuant to **MCR 3.993(A)**. an order terminating her parental rights to the Michigan Court of Appeals. She requested appellate counsel within fourteen days of the entry of the order terminating her parental rights to her son Jeremiah Gordon, Thus, her appeal to the Michigan Court of Appeals was timely. The decision of the Michigan Court of Appeals is dated August 11, 2011, less than twenty-eight days from the filing of this Application of Leave To Appeal.

STATEMENT OF QUESTIONS PRESENTED

1. DID THE MICHIGAN COURT OF APPEALS ERR BY FAILING TO REMAND THIS CASE TO THE TRIAL COURT TO ENSURE COMPLIANCE WITH THE NOTICE REQUIREMENT OF THE INDIAN CHILD WELFARE ACT, 25 USC 1901 ET SEQ. WHEN THE APPELLANT AT THE PRELIMINARY HEARING LEVEL INFORMED THE TRIAL COURT THAT HER FAMILY WERE MEMBERS OF THE SAGINAW BAND OF THE CHIPPEWA INDIAN TRIBE?

Appellant answers YES.
Appellee Michigan Department of Human Services's (DHS) answers NO.
Appellee Lawyer-Guardian ad Litem has not participated in this appeal to date.

The trial court addressed the issue by directing DHS to provide notice (although only notice to ICWA, which is the name of the statute, not an entity) and to place the response in the court file, but failed to ensure that DHS complied.

3. DID THE MICHIGAN COURT OF APPEALS ERR BY FINDING THAT THE ISSUE OF NOTICE TO A FEDERALLY-RECOGNIZED AND NAMED AMERICAN INDIAN TRIBE COULD BE WAIVED BY THE APPELLANT MOTHER?

Appellant answers YES.
Appellee DHS presumably answers NO.
Appellee Lawyer-Guardian ad Litem's answer is UNKNOWN.

4. DID THE TRIAL COURT RECORD SUPPORT THE CONCLUSION OF THE MICHIGAN COURT OF APPEALS THAT THE APPELLANT HAD WAIVED THE NOTICE REQUIREMENT OF ICWA?

Appellant answers NO.
Appellee DHS's answer is UNKNOWN.
Appellee Lawyer-Guardian ad Litem's answer is UNKNOWN.
The MIchigan Court of Appeals answers YES.
The trial court ordered DHS to comply with the notice requirements of ICWA.

5. DID THE MICHIGAN COURT OF APPEALS ERR BY FINDING THAT THE DEPARTMENT OF HUMAN SERVICES MAKE REASONABLE EFFORTS, OR ACTIVE EFFORTS IF THE CHILD IS AMERICAN INDIAN, TO REUNIFY THE APPELLANT WITH HER CHILD ESPECIALLY CONSIDERING THAT TITLE IV-E FUNDS PURSUANT TO 42 USC 675(4) WERE MISAPPROPRIATED BY FAILING TO PROVIDE TRANSPORTATION FOR THE CHILD TO THE MOTHER FOR VISITS SUFFICIENT TO ?

Appellant answers YES..
Appellee DHS answers NO.
Appellee Lawyer-Guardian ad Litem's answer is UNKNOWN.

The trial court answers YES only to reasonable efforts, but failed to ensure that appropriate use of Title IV-E funds.

6 DID THE COURT OF APPEALS ERR BY AFFIRMING THE TRIAL COURT'S FINDING THAT CLEAR AND CONVINCING HAD BEEN PRESENTED TO PROVE STATUTORY GROUNDS EXISTED TO TERMINATE PARENTAL RIGHTS, ESPECIALLY WHEN IT IGNORED THE SALIENT FACTS THAT MOTHER HAD HOUSING, EMPLOYMENT, HAD COMPLIED WITH COUNSELING, AND HAD BENEFITTED FROM PARENTING CLASSES?

Appellant answers YES.
Appellee Department of Human Services's answer is NO.
Appellee Lawyer-Guardian ad Litem's answer is UNKNOWN.
The Michigan Court of Appeals answers NO.
The trial court's answer is NO.

7. DID THE COURT OF APPEALS ERR BY FINDING THAT IT WAS IN THE CHILD'S BEST INTERESTS TO AFFIRM TERMINATION, ESPECIALLY GIVEN THAT THE COURT CLINIC'S EXPERT GAVE HIGHLY-SPECULATIVE TESTIMONY BASED ON WHAT DHS HAD TOLD HER AND HAD NEVER OBSERVED THE MOTHER AND CHILD TOGETHER NOR HAD EVER MET THE CHILD?

Appellant answers YES.
Appellee Department of Human Services's answer is NO.
Appellee Lawyer-Guardian ad Litem's answer is UNKNOWN.
The Michigan Court of Appeals answers NO.
The trial court's answer is NO.

STATEMENT OF FACTS

This child protective proceeding began with the Department of Human Services (DHS) requesting an Order To Take Into Custody (OTTIC) on **May 21, 2008**[1]. Referee Karla Mallett conducted the hearing by telephone, and neither the child nor the parents were represented by counsel. {Tr. 5-21-08, p.3}.Children's Protective Services' worker Nina Bailey testified that the reason for her request to take Jeremiah Gordon (dob May 9, 2007) into custody was a referral for medical neglect. Jeremiah had sustained second-degree burns to his hands from falling into a fireplace, and his mother had failed

[1] The applicable court rule as to an OTTIC is MCR 3.963(B).

to return to Hurley Hospital for a medical follow-up treatment. {Supra, pp. 3-4} According to Ms. Bailey, Jeremiah had been in a guardianship, but that had been terminated on certain conditions that the child was not supposed to be in the Pontiac area with a Mr. Stevens, but that mother was currently with that person. Ms. Bailey alleged that multiple people were staying in the home with mother and that mother also had an active CPS case. She had the child around substance abusers, was improperly supervising, and had not been using appropriate parenting skills. Generally, the environment was unsafe. {Supra, pp. 4-5}. Ms. Bailey stated that three counties had been involved with the mother. {Supra, p. 5}. The Court then found that based on the history and the allegations, the surroundings would endanger the child's heath, safety or welfare, and that the present placement was contrary to the child's welfare. {Supra, pp. 6-7}. The Referee further found that reasonable efforts had been made by DHS.

The Referee then asked if there was an American Indian tribal membership or eligibility, to which Ms. Bailey said, "No." ***No testimony was provided by Ms. Bailey if she had researched the American Indian heritage question.*** {Supra, p. 7}. When asked if any relatives were available, Ms. Bailey stated that she did not have any currently, but would have to ask the mother. {Id}. When asked about a criminal history and Central Registry history, Ms. Bailey stated that mother had a criminal history, but no history of being on the Central Registry. The Court then granted the OTTIC, placed the child with DHS pending a preliminary hearing set for the next day. {Supra, p. 8}.

On **May 22, 2008,** the trial court conducted a preliminary hearing. Mother had appointed counsel, Larry Smith, who sent in a substitute.Giving probable cause testimony, the worker claimed that based on her investigation the mother had not been

properly supervising the child and had failed to provide follow-up medical care. {Supra, p. 10}. On May 20, 2008, mother had admitted that she had failed to follow medical instructions, that she had three adults and her boyfriend living on a one-bedroom studio apartment. {Supra, pp. 10-11}.

Under cross-examination by the defense, Ms. Bailey testified that mother had been living in Shiawassee County, whose court had jurisdiction over Jeremiah. (Ms. Bailey did not specify the type of case). The assigned CPS caseworker in that county was Melissa Deming whom Ms. Bailey had contacted. {Supra, p. 12} Ms. Bailey specified that Jeremiah had burned himself in mother's care, was treated at the Hurley Hospital Burn Unity, but mother had stated that she did not return for care. When CPS intervened, the mother returned for care. Currently, Ms. Bailey had no documentation that mother had to return, but had requested paperwork. {Supra, pp. 12-13}. Ms. Bailey also admitted that Paragraph F of the petition was no longer correct because the CPS case against the mother in Shiawassee County had been closed. {Supra, p. 14}. Mother had given guardianship to a relative, but had not been ordered to do anything by the Shiawassee County court. {Supra, pp. 14-15}. Therefore, when the petition alleged that the mother was supposed to attend parenting classes and attend counseling, *there was actually no court order for mother to do that.* {Supra, p. 15}. Ms. Bailey admitted that her interview of the mother had been ten minutes and that the burns had been an accident. The testimony further revealed that Ms. Demming had seen a different home than had Ms. Bailey. {Supra, p. 16}. As to CPS referring the mother to parenting and counseling, that was an alleged request of Ms. Demming, but Ms. Bailey had no record in writing of those alleged referrals and had no documents as yet from Shiawassee County CPS.

{Supra, p. 17}. The Referee then announced that the Court was confused; Ms. Bailey then clarified that there had not been a child protective proceeding in Shiawassee County, but only a guardianship that was now terminated. {Supra, p. 18}.

The Prosecutor as Co-Petitioner argued that probable cause had been proven and requested authorization of the petition The defense attorney argued that the court not authorize the petition as Ms. Bailey had not fully researched the matter and had not received documents. The defense asked for return of the child to the mother {Supra, pp,. 19-20}. The Lawyer-GAL, Ms. Shepherd, asked for authorization of the petition. {Supra p. 20}. During all of the testimony, no one inquired about American Indian heritage. {Supra, pp. 5-20}.

The Court, *admitting that there were credibility issues on some of the allegations,* then authorized the petition. The Court then at the end of the hearing asked about American Indian heritage; **the mother replied that her family is part of the Saginaw Chippew Indian Tribe in Mt. Pleasant and that her parents were members.** {Supra, pp. 27-28}. **The Referee then ordered DHS to do an investigation and notify the tribe.** {Supra, p. 28}.

On **July 21, 2008,** the Court on the day of trial, the Prosecutor announced that the mother would plead no contest. {Tr. 7-21-08, pp. 3}. **The Court inquired if DHS had received any response regarding the potential American Indian heritage of the minor. Ms. Bailey stated that she had proof that her letter had arrived, but no results as to tribal membership**. {Supra, p. 4}. **No proof to this attorney's knowledge after examining the trial court's files was ever presented to the trial**

court on that date or ever.[2] The Respondent mother then proceeded to plead no contest. {Supra, pp. 6-8}. For an independent basis, a complaint filed by DHS on May 20, 2008, was used. {Supra, pp. 8-9}. The Court then ordered a psychological evaluation for the mother,and set the matter for disposition. {Supra, p. 9}.

DHS had received notice of a potential relative placement. Mother's attorney stated that the mother liked the current placement and was concerned that her relatives lived far up north. **(The issue of transportation became an issue on appeal pursuant to Title IV-E).** Ms. Collins, Assistant Prosecutor, stated she had discussed the distance with the relatives; they claimed that they would bring the child down for visits. Apparently, the child had previously been in a guardianship with those relatives, but the guardianship had been terminated with the probate court ordered the return of the child to the mother. {Supra. pp. 10-11}.

On **September 22, 2008,** the Court proceeded to the initial disposition The goals in the case plan were for the mother to obtain and maintain suitable housing, to maintain a legal source of income, to obtain appropriate parenting skills, to obtain emotional stability, to obtain and maintain a substance-free lifestyle, and to maintain the family bond. DHS planned to place the child with the aunt up north. *The relatives had agreed to driving the child down to Oakland County for visits once per week with the mother.* {Supra, pp. 4-5}.

The defense attorney agreed with most of the Parent Agency Agreement, but did not understand why three random drug screens were in it as the Court had ordered

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[2] During oral arguments in the Court of Appeals, Judge Wilder asked the Prosecutor where there was proof of notice to the tribe; the answer was that DHS said they had notified the tribe. No documentation was ever provided to my knowledge in the trial court's file.

previously that if mother's drug screen were negative; no further screens were required. Mother had been drug-free for several years. The defense requested unsupervised daytime visits and requested longer visits as mother had only been afforded short visits to date. {Supra, pp. 7-8}. **The court then asked if there were American Indian heritage, to which Ms. Hinkle replied that there was on her mother's side. Her aunts and uncles were tribal members.** A woman then spoke up and stated that she was Ms. Hinkle's biological mother and that she was still waiting on her membership. {Supra p. 9}. The Court inquired if notice had been sent to ICWA;[3] the prosecutor responded that notice had been sent, but no response had been received. **Again no documentation was shown to the Court.**

The Court then ordered the mother to sign and comply with the case plan and ordered the mother to have a psychiatric evaluation to be paid for by DHS. Mother was to follow all recommendations from the psychiatric evaluation. The visits were to remain supervised by DHS or its designee. The Court removed the requirement of drug screens. **The Court asked Ms. Campbell of DHS to obtain a copy of the notice sent to ICWA for the court file.** {Supra, pp. 10-11}.

On **January 5, 2009**, the Court held a review. Ms. Lisa Smith, foster care worker, reported that Ms. Hinkle had supervised visits with Jeremiah, who had continued to reside with an aunt up north, at the DHS office and had interacted appropriately with her son. {TR. 1-5-09, pp. 3-4}. Ms. Hinkle was currently taking parenting classes and was in **counseling at Oakland Family Services. {Supra, p. 4}. As to compliance with ICWA, DHS claimed that *he paperwork had been mailed back to ICWA; more**

[3] The trial court did not seem to understand that the notice had to mailed to the tribe, if known, and that ICWA was the name of the federal statute and not an agency.

information was sent about the mother's family history; mother filled out the paperwork. The agency was awaiting a response from ICWA. {Id}. No record is in the court file of the paperwork being sent.

Ms. HInkle had moved into a bigger two-bedroom, was employed, had started counseling, and had obtained the psychiatric evaluation. {Supra, p. 5}. The psychiatric evaluation had found mother to have an adjustment disorder with depressed mood, but no medication had been recommended. Upon inquiry from the Court, Ms. Smith admitted that the new therapist was unaware of the results of the psychiatric evaluation. {Supra, p. 6}. The Lawyer-GAL agreed with the recommendation of the worker and stated that the supervised parenting time appeared to be going well. {Id}. The Court then continued placement with DHS and required DHS to provide mother's current counselor with a copy of the psychiatric evaluation. The Court wanted the caregiver to provide the child's size for clothing in writing, and at the supervised visits, the caregiver was not to be present in order that mother and child could have the visits uninterrupted. {Supra, p. 13}.

At the **April 2, 2009,** review the caseworker from CSS reported that mother had been progressing well as she had finished fifty percent of her individual counseling session and had received a positive report from her therapist. Moreover, she was employed.. Although she had finished parenting classes, mother had voluntarily decided to participate in the Mommy and Me classes for more training. {Tr. 4-2-09, p 4}. She had moved to another home and had been doing well with the visits every week with supervised visits. The worker recommended unsupervised visits. {Supra pp. 4-5}, The issue of American Indian heritage surfaced, but was brought up by an unidentified

speak as to tribal financial benefits. Judge Anderson stated she was not interested in money. The mother's statement during this hearing was inappropriately used by the Prosecutor to argue for waiver of the ICWA issue when the fact remained that there was no proof that the Saginaw band of the Chippewa tribe had ever been properly served. **Judge Anderson instructed Ms. Smith to contact ICWA {SIC}. and to find out why there had been no response to the trial court. {Supra, pp. 6-11}. The worker claimed (obviously lying) that she "had sent papers to ICWA." {Supra p. 10}.]**

On **July 2, 2009,** the Court was told at the] review hearing that he child had been having unsupervised visits with his mother, which had gone well. other had been having too many people at her home,{Tr. 7-2-09, pp. 3-4}. Mother had complied with the case plan. The recommendation was to begin overnight visits. {Supra, p. 4}. Judge Martha Anderson stated that it was glad things were going well and approved overnight visits. {Supra, p. 5}.

During the **October 8, 2009,** review, DHS reported that Jeremiah continued in placement with his aunt. {Tr. 10-8-10, p. 3}. Several nights per week, Jeremiah spent staying overnight at his mother's home. Ms. HInkle had recently moved into a new home in Pontiac. The worker had been to the home and found it be a fit environment for Jeremiah. {Supra, p. 4}. Ms. Hinkle was still employed as a caregiver and was still attending school. Ms. Hinkle had recently indicated that she had a warrant from Clare County for writing bad checks. Although Ms. Hinkle had told the worker that she was making payments, the Lawyer-GAL The worker then mentioned a letter written to the Court from a relative with concerns about the mother's parenting skills: Judge Anderson

informed the worker that she did not read ex parte communications. {Supra, p. 5}. The worker requested that unsupervised visits be suspended. {Supra, pp. 6-7}.

The defense attorney, stated that Ms. Hinkle, who had only recently learned of the warrant, had contacted the Court in Clare County to clear up the warrant. {Supra p. 8}. As far as the allegation that too many people had been hanging out at her home, some people had been there but no one had spent the night while the child had been there. Mr. Smith argued that the mother had done all that had been requested asked the Court to continue overnight visits. When the Court asked about the charges, which were uttering and publishing from 2006; mother had taken care of the original charges in 2007, but an additional check had been discovered. {Supra, pp. 9-10}. Ms. Hinkle then explained that she had been pulled over, and learned about the warrant She owed $50.39 for probation costs and the warrant was for a check for under $100.00. She called the clerk in Clare County as the officer instructed. The clerk told her to write a letter to judge because of the lack of transportation and work out a payment arrangement. Ms. Hinkle did as instructed and stated that she had never gotten notice of a court date.

The Court was concerned about the people in the home as the Court has instructed the mother not to have people around while Jeremiah was there and was also concerned about the two pit bull puppies in the home. {Supra, pp. 12-13}. The Court stated that once the warrant was cleared up, the overnight visits would resume. {Supra, pp. 15-16}

During the **April 8, 2010**, the review hearing, mother's substitute attorney stated that the warrants had been resolved. The LGAL took issue with the assert\ion that the

warrants had been taken resolved. {Tr. 4-8-10, pp. 4-5}. The worker from Catholic Charities, Ms. Kalinowski, reported that Jeremiah would turn three next month and continued to be placed in Shiawassee County with his aunt. She claimed that he had been doing well, but there were concerns about his behavior after he had been with his mother. The foster parent claimed he became very angry after visits, the worker had observed this behavior, and the child regressed by urinating and defecating anywhere after visits despite being toilet-trained. {Supra pp. 5-6}. Parenting time was unsupervised but was not overnight because of the lack of bench warrant paperwork. {Supra, p. 6}. The worker that mother had given documentation about paying the court fees, but claimed that it was not official court paperwork. {Supra, pp. 6-7}. Mother had stated that she had broken up with her boyfriend David because the Court had told her she had to chose, but mother had stated that David would always be a part of her life- a statement that concerned the worker. As to housing, mother was living in a home undergoing foreclosure, and thus would have to move. The worker had informed mother that a home study would be needed prior to visits commencing in that home; the mother agreed. {Supra, pp. 7-8}. As to employment, mother had stated that she was taking care of two elderly people, but was looking for a second job. She had completed parenting classes. {Supra, p. 8}. The worker had a concern about mother having a pit bull puppy and that the child had reported his mother hitting him and that David was still there. {Id}. The worker recommended termination of parental rights. Ms. Hughes from DHS then stated that DHS recommended termination "based solely upon the lack of compliance with the service plan." DHS was particularly concerned about a new

housing problem and the lack of verifiable legal employment coupled with the dog and boyfriend situations and the abuse. {Supra, p. 9}.

The Lawyer-GAL reported that she had visited Jeremiah at time when he was in transition from his mother's back to the foster home. He appeared to be torn between his mother and foster mother. {Supra, pp. 9-10}. Courtney Hinkle then told the Court that she had done everything including that she had paid her rent. *Ms. Hinkle stated that she had asked DHS to put her son in a regular (meaning non-relative) foster home because that would give her a chance.* {Supra, p. 12}. Mother stated that she had changed her life, that she was in school, and that she bought her son what he needed. {Supra, p. 13}.

Mother's (stand-in) attorney requested that the Court find substantial compliance with the case plan and argued that going from unsupervised visits to a termination petition did not make any sense. He asked for an opportunity for Mr. Smith to meet with DHS to work on the problems prior to the Court authorizing a termination petition. {Supra,, pp. 13-14}. Mother stated that her son did not bash his head at her house as the aunt claimed that child did at the aunt's home. Mother believed that her son was confused. {Supra, pp. 15-16}. The Court found that the mother had not made substantial progress and recommended that a termination petition be filed. The Court changed the visits to supervised but gave DHS discretion to return to unsupervised status if progress were being made. The Court express its concern with the statements made by Jeremiah as well as things in the court report. {Supra, pp. 19-20}.

On **June 29, 2010**, the Court held a bench trial on a supplemental petition. The matter began with the Prosecutor requesting that the Court take judicial notice of the

legal and social file. No one objected. {Tr. 6-29-10, p. 6}. The Prosecutor then called Lisa Smith, a caseworker just after the initial disposition hearing on September 24, 2008. {Supra, pp. 8-10}. Mother signed the original Parent-Agency Agreement. She was required to complete parenting classes, be evaluated, participate in counseling, and to provide proof of employment and maintain stable housing. {Supra p. 11}. The witness remained on the case until May 2009. From the fall of 2008 until May of 2009, Ms. Hinkle attended parenting classes and counseling and had a psychiatric evaluation. Mother did not provide proof of income but stated that she was employed. She did not maintain stable housing as she moved several times within the City of Pontiac. {Supra, pp. 12-14}. In the fall of 2008, mother was allowed supervised visitation, but she did obtain unsupervised visits which involved having her son for several hours per week. {Supra, p. 114-15}. When the worker left the case in May 2009, the goal was still reunification. Mother's evaluator Dr. Farooq recommended in December 2008 that the mother continue psychotherapy. {Supra, pp. 17-18}. The witness had observed mother with Jeremiah and noticed that the interactions improved as the mother continued with parenting classes. These observations occurred around March through April 2009. {Supra, p. 18}.

Under cross-examination, the worker admitted that out of the five requirements in the PAA, mother had completed three- parenting classes, counseling, and the psychiatric evaluation. As to housing, she moved three times, and the worker admitted that she could not recall if mother gave her an explanation for the three moves. {Supra, pp. 20-22}. Mother and Jeremiah appeared bonded, and her interactions with him were increasingly appropriate. Lisa Smith admitted that mother had benefited from parenting

classes, {Supra, p. 22}. Under cross-examination from the Lawyer-GAL, the worker spoke about the her concerns about the dog being around Jeremiah, but admitted that the child had toys and other children with whom he could play at the home visits. {Supra, pp. 24-27}.

On re-direct, Ms. Smith stated that at the surprise home visits, there would generally be five to six adults in the home. The mother stated that she worked weekends. {Supra, pp. 28-30}. On re-cross, the worker was confronted by Mr. Smith as to her court report filed March 30, 2009, in which she stated that mother was currently working as a caregiver and making around $700.00 per month. {Supra, pp. 32-33}. At the unannounced home visits, Ms. Smith did not speak to any of the people in the home and admitted that she had not observed any illegal activities. {Supra, p. 34}.

The Prosecutor then called Denise Kalinowski, a foster care worker employed through Catholic Charities of Genesee and Shiawassee Counties. {Supra pp. 36-37}. In the middle of August 2009, the witness had become Jeremiah's foster care worker when Ms. Stevens became licensed through Catholic Charities. {Supra pp. 37-38}. Mother and Jeremiah appeared bonded with the mother's interactions with him were increasingly appropriate. Lisa Smith admitted that mother had benefited from parenting cllasses, but did not know if the mother had benefitted from the other services. {Supra, p. 22}. Under cross-examination from the Lawyer-GAL, the worker spoke about the her concerns about the dog being around Jeremiah, but admitted that the child had toys and other children with whom he could play at the home visits. {Supra, pp. 24-27}. On re-cross, the worker was confronted by Mr. Smith as to her court report filed March 30, 2009, in which she stated that mother was currently working as a caregiver and making

around $700.00 per month. {Supra, pp. 32-33}. At the unannounced home visits, Ms. Smith did not speak to any of the people in the home and admitted that she had not observed any illegal activities. {Supra, p. 34}.

The next witness called by the People was Denise Kalinowski, a foster care worker employed through Catholic Charities of Genesee and Shiawassee Counties. {Supra pp. 36-37}. In the middle of August 2009, the witness had become Jeremiah's foster care worker when Ms. Stevens became licensed through Catholic Charities. {Supra pp. 37-38}. Ms. Stevens, who was Jeremiah's maternal great-aunt, had fostered Jeremiah since May 2008 {Supra pp. 38-39}. Because the parenting classes and psychiatric evaluation had already been completed, this worker was dealing with housing issues. In August 2009, mother was living in Pontiac in one place. At the end of September or October, mother moved. Mother had been evicted in October 2009 from her home in Pontiac; an eviction notice had been given to Ms. Kolinowski. In April or May 2009, she moved again. On June 21, 2010, mother called the witness and stated that she had another residence, which the worker visited; that residence was the third. The new residence was a two-bedroom home, with one bathroom. She had the basics for one adult with not toys or furniture for a child, but stated she would get those things. She needed those things picked up from the other house. {Supra p. 43-45}. Ms. Hinkle had never presented the worker with any proof of income despite the worker asking for proof many times. Ms. Hinkle reported that she was working for an elderly woman, allegedly David Maddow's grandmother, for about $700.00 per month. {Supra, pp. 43-44}. The worker never received documentation or a tax return. {Supra, pp. 44-45}. When the witness first became involved, there was a court hearing in October 8, 2009, the Judge

indicated that mother had a bench warrant, that there were pit bulls in the home that needed to be removed and that no one else was to be in the home when the child was there other than the mother. T Not until May of 2009 was there confirmation that mother had taken care of the bench warrant in Clare County although mother had produced a receipt months earlier. {Supra, pp. 50-51}. After the review of October 2009, mother continued to have unsupervised visits, just not overnight visits, In November of 2009, Jeremiah started to exhibit extreme behavior according to reports from the foster mother. In April 2010, the unsupervised visits were terminated. During the time period from October 2009 until April 2010, the puppies went up the street. She was inconsistent with her visits. Ms. Kalinowski stated she did not see a bond between the mother and son. At this point, the visits were reduced to telephone visits. Supervised visits were supposed to take place at her agency, but were reduced to phone visits. Mother had not been calling Jeremiah regularly. {Supra, pp. 55-56}. A phone schedule was given to the mother as to times and days she could call, but sometimes mother would call on days and at time not allowed. {Supra, pp. 56-57} This concerned the worker because the child's behavior had become worse due to the inconsistent contact with the mother. Once the child was not seeing his mother, his head-butting decreased, and his toilet accidents stopped. Once the phone visits started he started tearing up his bedding, defecating on his toys, smacking people and screaming in fists of rage.{Supra, pp. 57-58}. The supervised visits at the agency never occurred; Ms. Hinkle called several times and said that she was in the hospital. **One point, mother said she did not have transportation although a bus pass had been given at one point.** Mother

did provide some notes from her doctor at the court hearing in May 2010. {Supra, pp. 59-60}.

Under cross-examination from the defense, Ms. Kalinowski admitted that she had no training in psychology, nor had she taken Jeremiah to any psychological to see the source of the behaviors. She was unaware of any referrals made to get Jeremiah some help. {Supra, pp. 61-62}. As to missed agency visits mother was a no call and a no show for two occasions. {Supra, p. 62}. As to the bond, the witness had seen the mother with her son several times at mother's home, but could not remember how many home visits she had observed them together. {Supra, p. 63}. As to mother's moving, the worker admitted that the last place was a better residence that the previous one. The worker had gone to the new home on June 22, 2010, and mother had moved in the previous day. {Supra p. 64}. When asked if she had seen mother's tax return, Ms. Kalinowski claimed she could not recall. On none of the last two or three visits, Ms. Kainlowki admitted that she had not seen the dogs. As to people being in the home, Ms. Kalinowski disclosed that she did not always visit the home when Jeremiah was there. {Supra, pp. 165-66}. The worker testified that there was to be no contact with the foster parent and mother whatsoever, and she did not always know if people were at the home. Further, she had difficulty remembering if Jeremiah were with mother during some of the times people were at the home. {Supra, pp. 166-67}. Mother reported that she tried numerous time to contact her son by telephone, but the child would hang up, and then she would call back. {Supra, p. 168}. Ms. Hinkle's home appeared to be appropriate and acceptable. Mother had income, but worker had not seen proof. {Supra, p. 68}.

Under cross-examination from the Lawyer-GAL, Ms. Kolenowski stated that discussions were held about the difficult relationship between Ms. Stevens and the mother because of Jeremiah. {Supra, pp. 69-70}. Ms. Stevens claimed that Jeremiah did not want to visit with his mother. {Supra, p. 70}. The worker had been present once in the home when David Maddox had been present; his background check showed that he was inappropriate.{Supra, p. 71}. On re-direct, the witness stated that Mr. Maddox had a lengthy criminal record and the court had ordered that he was not to be around the child. {Supra,pp. 71-72}. On re-cross, the witness became aware of the strife between the mother and the foster mother. {Supra p. 74}. While the witness had not observed the child being smacked by the mother, the aunt had claimed that had happened; the mother had previously told the court that she had tapped Jeremiah's mouth with an open hand in a gesture such as indicating to a child to be quiet. {Supra pp. 74-75}.

The Prosecutor then called the great-aunt, Charel Stevens. She had known Jeremiah since he had been two months old. Her sister (Courtney's mother) wanted her to see the baby, but Ms Stevens's partner wanted to go. A few days later Courtney called to say she had no where to live. He stayed with the aunt and her partner for about eleven months; mother went go back and forth to her boyfriend in Pontiac. Eventually, a guardianship was obtained in January 2008 when Jeremiah was about ten months old.}. On April 9, 2008, the Court terminated the guardianship. He came to live with the witness in September 2008 and had continued to reside with her since then. {Supra pp. 80-81}.

As to the supervised visits at the agency, the mother missed with no call and no show. {Supra,p. 86}. Ms. Stevens claimed that Jeremiah head butted, had to be restrained, and he had been doing that on and off since he was eleven months old. The head-butting decreased for the the five or six weeks Jeremiah did not have contact with his mother. Jeremiah would also refuse to use the bathroom everywhere in the house. The witness asserted that she had tried to get her niece a job and that she had never disparaged her and encouraged Jeremiah to have negative feelings toward his other. {Supra, p. 92}.

The Court recessed. The mother went home to get proof of her income that she stated she had turned into Ms. Kalinowski. {Supra, pp. 93-94}. Under cross-examination, Ms. Stevens stated that Courtney Hinkle had lived with her on and off her entire life, but she did not see Jeremiah until he was two. When questioned about that, Ms. Stevens said she had kicked Courtney out of their (meaning her and her female partner's) home. {Supra, pp. 95-96}. When asked about the origins of applying for guardianship, Ms. Steven alleged that "a case worker in my county said in order for me to keep him I had to." Ms. Stevens then claimed she did not know the case worker's name and did not know why the case worker had come to her home. Ms. Stevens denied calling CPS. {Supra, pp. 97-98}. During the three months of the guardianship, the mother did not have visits with her son .The denial of visits caused the mother to request that the Court modify the guardianship. The Court up north terminated the guardianship, but the Aunt claimed that she could not remember that the mother had complied with the requests of CPS. {Supra, pp. 99-100}.

The last witness called was Tiffany Hughes, foster care worker from DHS, the petitioner on the supplemental petition. {Supra, pp. 104-105}. Most of the allegations in the supplemental petition were based on information supplied by Catholic Charities. {Supra p. 105}. She had reviewed the DHS file and concluded that mother had substantially failed to comply with the case plan for three reasons: 1) lack of stable housing; 2) lack of employment verification, and 3) the issues with the boyfriend and the dogs. {Supra, p. 106}. She also had concerns about the child's reaction to the mother because DHS had been trying to reunify. {Supra, pp. 105-106}. The child, now age three, had spent two out of three years out of the mother's custody. Ms. Hughes did not approve of the mother's sporadic pattern of visits. She recommended termination of parental rights. {Supra, pp. 107-108}.

Under cross-examination from the defense, Ms. Hughes admitted that mother had completed parenting classes as part of the case plan. When asked if she knew anything about the mother's completing an additional program called Mommies and Me, Ms. Hughes stated that she had not received any information of that nature from Catholic Charities. {Supra, pp. 108-109}. Ms. Hughes admitted that the mother did complete a psychiatric evaluation in 2008 as part of the case plan, and mother also did the counseling required. {Supra p. 109}. Ms. Hughes was unaware of mother received any benefits from DHS such as food stamps or cash assistances and claimed that she was not in the benefits area of DHS. Upon further cross-examination, she admitted that it would be important to know that, but that the DHS computer systems did not cross-reference between foster care and benefits. {Supra, p. 110}. When asked about the dog issue and boyfriend issue, Ms. Hughes admitted that the dog problem had been

resolved and that the mother stated she was no longer with her boyfriend, no one had seen mother with him, and thus that issue was also resolved. {Supra p. 111}. She then clarified that at the time she had filed the petition, the dog issue "may have been resolved. I'm uncertain about the boyfriend." {Supra pp. 111-112}.

As to the housing issue, at the time of the last court hearing, mother had an eviction notice, but had supplied the agency with another home to have checked out. She then admitted that the landlord was being evicted because of foreclosure, and that the mother had to move, but it was not mother's fault. {Supra, p.112}.

As to the child's alleged adverse reaction to his mother, Ms. Hughes admitted that the cause of that was open to interpretation including the fact that he had not seen his mother. **As to bus passes, Ms. Hughes stated that the passes were good for Oakland and Wayne County but not for other counties.** {Supra, p. 113}..

Under cross-examination from Ms. Shepherd, Ms. Hughes stated that mother would keep her directly informed when she moved and when her telephone number changed. {Supra, p. 115}.. Ms. Hughes had received information that mother intended to keep in contact with David Maddox. On re-cross from the defense, Ms. Hinkle had never told Ms. Hughes directly about mother's wanting to remain in touch with David Maddox. {Supra, p. 116}. The Court then heard a motion by the prosecutor to amend citation in the petition. {Supra, p. 118}

Defense attorney Smith then called Ms. Kalinowski for clarification and began by showing her a form, which she admitted that Page 2 looked familiar. {Supra, pp. 119-120}. Page 2 was an an approval for cash assistance with a monthly income shown and a budget summary and an earned income of $700.00. She admitted that Page 1

appeared to be a Michigan DHS form. She remembered seeing Page 2 on June 22, 2010 at Ms. Hinkle's residence. Ms. Kalinowski further disclosed that the mother was trying to explain it, but Ms. Kalinowski then stated: "I had never seen one of those before and I didn't understand what it was at the time." {Supra pp. 120-121}.. **So, Ms. Kalinowski then admitted that mother had showed her proof of income.** {Supra p. 121}.

On cross-examination by the Prosecutor, Ms. Kalinowski stated that Page 2 did not show where the $700 originated, nor did it indicate how often Ms. Hinkle would be paid. The witness had not been provided the source of the $700 income. {Supra, pp. 122-123}.

Ms. Hinkle then testified As to the guardianship, she had petitioned for visits because the guardian had refused to allow her to visit as the Judge had told her she had unlimited parenting time, but there was an ongoing family feud. The Court then terminated the guardianship and returned the child to her custody, but prior to the termination CPS had been working with the mother. {Supra, p. 126}.

As to the parts of the case plan DHS had alleged noncompliance, Ms. Hinke addressed the allegation regarding stable housing first. She stated she had moved four times, the first from an apartment where people had been partying upstairs, and she moved to a house, a single-family home, with a bigger yards on the same street. Thus she moved to a better situation. {Supra, pp. 129-130}. She lived at the address from May of 2009 to August 24, 2009. She then moved into another home because it was bigger and closer to work. She lived there from August 24, 2009, until May 23 or 24, 2010, on Going Street in Pontiac. {Supra p. 130}. She then stayed with a friend to June

4, 2009, and then moved to a house on Bennett where she currently lived. She chose it because it had a bigger yard, and Jeremiah would have a room of his own and a play room. For the Going street residence, the house was foreclosed on, and the City of Pontiac informed the landlord that he had not registered it as a rental. Each time she had moved in the last few years, it was to better her situation. {Supra pp. 132-132}. She now lived in a quiet neighborhood with a playground. She then described when asked by the Court activities she would do with her son and a plan for preschool. {Supra, pp. 133-134}.

As to legal income, Ms. Hinkle stated she had applied for food stamps and Medicaid, and was found to only eligible for food stamps. When she applied, she showed the DHS worker her pay checks from family of the person for whom she cared. She gave her DHS worker the copy of her original 2009 tax return and was trying to get a copy. {Supra, pp. 135-136}.. As for her 2008 return, she had shown that to the foster care worker prior to Ms Hughes. She got a check the fifth of every month. {Supra, pp. 136-137}. The mother stated that she had asked the previous worker if a letter from her employer would do, but the worker never answered her. {Supra, pp. 137-138}..

As to the boyfriend issue, he was now her ex-boyfriend and no longer a part of her life and had not been part of Jeremiah's life for a long time. {Supra, pp. 138.-139}. As to the dog issue, she stated it took several week s to find new homes for the dogs and no longer had any dogs. {Supra, pp. 139-140}. As to visits, mother stated she called every time and had left messages and had called Ms. Kalinowski's number. {Supra, pp. 140-141}. Since 2008, the mother believed she had improved her life as she had a home, a job, was going to school and had made a better situation for Jeremiah. {Supra,

p. 141}. Mother denied that other people were at her home when Jeremiah was there and those people would leave. {Supra, p. 142}.

Under cross-examination from the Lawyer-GAL Ms. Hinkle stated that as to the house on Going Street, she had signed an agreement for renting to own, but she later discovered that the landlord had lost the house prior to her moving in because of foreclosure. {Supra, pp. 143-144}. As to obtaining confirmation from Clare County as to the warrants being taken care of, she had been told to pay the fine, which she did, but it took a few months. {Supra, pp. 145-146}. Mother then summarized what she had learned in parenting class. The LGAL thanked the mother for allowing her to come by unannounced. {Supra, pp. 147-148}..

Under cross-examination by the prosecutor, Ms. Hinkle stated she moved to Pontiac because her aunt had been treating her as if she were a child and her family was in Pontiac. Ms. HInkle stated that her birthmother had lost her rights to her when she was a child from the same family members who were causing problems now. As a child was she abused and neglected by both her biological and adopted parents. {Supra, pp. 151-152}. When Nina Bailey first got the referral, she gave the mother one week to find stable housing, and although she applied for programs, she could not get housing in one week. {Supra, p. 155}

David Maddox had been her boyfriend on and off since 2004, but they were not longer together. She still had contact with his family. {Supra, p. 158}.
Mother claimed that her son did not have the behaviors that the aunt had described at her home. {Supra, p. 164}. **Mother stated she did not have transportation to the agency as the bus pass was only for the tri-county area.** The office visits started in

April 2010. {Supra p. 166}. Between April 8, and May 20, 2010, with about six weeks of visits, she had pancreatitis and other health problems. She had been hospitalized. She had given medical documentation to the worker. {Supra, p. 167}. Mother stated she called each time to cancel a visit and left voice mails, but did not always get a return call. {Supra, p. 169}. She denied ever smacking Jeremiah for calling the foster mother "mom", but had tapped his mouth when he had called her a bitch. {Supra, p. 170}. Her parenting teacher had told her a light tap on the mouth was all right if nothing else worked. {Supra, pp.170-171}. She had talked to him twice since the last court date. She called and left messages, or he would hang up on her. One day he told her he loved her. {Supra, pp. 171-172}. She understood that a three-year-old could be inconsistent and that he could be mad at her especially because "people are probably telling him stuff." She had noticed that he kept suddenly telling her and her stepfather that they were "mean." {Supra, pp. 172-174}.

For a few of the missed agency visits, she had been sick. One she missed because there was bad storm, and the other she missed because she did not have a ride. {Supra, pp. 174-175}. **DHS sent her a regional pass that was only good for Oakland, Macomb, and Wayne County. Ms. Kalinowski would not help her with transportation.** {Supra, p. 175}. As to showing proof of income, Ms. Hinkle stated she had shown her 2008 return to Judge Anderson, and then her 2009 to the DHS worker prior to Ms. Hughes. She had also shown those returns to someone who had come to her home. Ms. Kalinowski had never asked for them. The 2009 return she showed her, but Ms. Kalinowski would not accept it because the benefits works had cut part of the top off the return. She had shown proof of income to Ms. Bailey who had been on the

case, then to Ms. Smith. {Supra, pp. 176-177}. As to the warrants, mother had taken care of the old charges. {Supra, pp. 177-179}. Mother stated that her life had been stable for the last year, but had not been prior to that. She had been in a home in Pontiac for almost a year before she had to move in August 2009. {Supra, pp.181-182}. Mother had obeyed the court and got rid of the dogs. {Supra, pp.184-185}.

. Under questioning by the Court, Ms. Hinkle admitted to having former boyfriends, one of whom was a gang member and the other a drug dealer. {Supra, pp. 202-203}.

The Court then heard closing arguments. {Supra, pp. 209-227}. The Court then made its findings as to statutory grounds. The Court found that the prosecutor had met its burden as to all three statutory grounds alleged. {Supra pp. 227-245}. The Court commenced a best interests on **October 25, 2010.** The first witness called was Katherine Conti, a clinical psychologist with a master's degree from the Oakland County Court Clinic, who was qualified as an expert.{Supra, pp. 6-8}.

Ms. Conti had first evaluated the mother in September 2008, and then re-evaluated her in October 2010. Mother had not accepted full responsibility for Jeremiah's coming into foster care. It was concerning to Ms. Conti that the mother believed that she had done everything that the court had asked of her and to have Jeremiah returned to her custody. {Supra, pp. 9}. Ms. Conti claimed that the termination of parental rights would have a minimal effect on Jeremiah, but admitted that she had never seen the mother and her son together. She thought that Jeremiah had already adjusted to the loss of any attachment. {Supra p. 34} Ms. Conti acknowledged that the mother had taken some positive steps and had definitely made efforts toward complying with the service plan, but felt that the barriers still existed. {Supra, p 37}.

Ms. Conti stated in response to the Lawyer-GAL's questioning that some parents with depression manage to be effective parents, but she did not believe that mother's depression had been treated appropriately at this point. {Supra, p. 39}. On re-direct, Ms. Conti stated that it was not reasonable for Jeremiah to wait another six months or more to be reunified with the mother {Supra, pp 40-41}.

The next witness called was Denise Kalinowski, the foster care worker Genesee and Shiawassee Counties from Catholic Charities, who was currently assigned to supervise Jeremiah's placement. Jeremiah had been in a relative placement for about two years. Jeremiah was healthy and participating in Early On. He had progressed since the last court hearing; at that time the Court had entered a no-contact order with the mother. Jeremiah's behavior had improved since the last hearing. {Supra, p. 46}. The witness claimed that the child had said that he did not want to go to his mother's. {Supra, pp. 47-48}. The worker recommended termination, and thought at this time that his mother could not meet his needs. There was testimony as to his attachment to the family with whom he was placed; the defense did not object despite case law that a comparison of homes was not proper. {Supra, p. 49}.

Under cross-examination from the defense, Ms. Kalinowski testified she had been on the case about a year-and-a-half, but could not recall the month in which she started and had not brought her file. {Supra, p. 49}. Ms. Kalinowski recalled that in July or August of this year, Jeremiah had said during a home visit that he did not want to go to see his mother. {Supra, p. 50}. Ms. Kalinowski admitted that Jeremiah's perceptions of his mother could be influenced by his foster placement. Ms. Hinkle had a toddler bed for Jeremiah in her home. The mother had called the DHS worker approximately two

weeks ago to get Jeremiah's current clothing and shoe size. Ms. Kalinowski disclosed that the mother had recently bought her son an outfit to wear underneath his Halloween costume and that she was capable of getting him clothing for winter. {Supra, pp. 51-54}

Mother reported working during the day, and the worker thought that would be a problem. When pressed, the witness admitted that when she had discussed a day care plan with Ms. Hinkle, the mother said she would try to switch her hours at work; Ms. Kalinownki admitted that mother could possibly do that. {Supra, p. 54}. At the end of the cross-examination, the following transpired:

> Defense attorney: " --do you believe that there's any need that she (mother) could not meet?"
> Ms. Kalinowski: "I guess, no, since you put it that way." {Supra, p. 55, lines 6-8}.

Ms. Kalinowk recalled seeing mother's tax return, and that it did appear that mother had a income that she had reported. The witness did not recall the year of the return. Under questioning by the Lawyer-GAL, Ms. Kalinowski stated that she believed that mother could provide for Jeremiah given the opportunity and with appropriate supports approved by DHS. Mother would need transportation.{Supra, pp. 57-58}. On **November 1, 2010,** the trial court continued tha best interests hearing. The Prosecutor began by calling Elissia Johnson, who was *standing in* for the assigned worker. She testified that DHS recommended termination of parental rights because of the services provided and the recommendation of the psychological evaluation. {Tr. 11-1-10, pp. 3-5}. The witness felt that Jeremiah had been in care for a long time. One of the reasons she recommended termination was his bond with the "foster parents" although there was no married couple involved in fostering. {Supra, p. 6}. Under cross-examination, Ms. Johnson admitted that she had never been assigned to this case and

had no first-hand knowledge except for reviewing the case file that day. Under cross from the Lawyer-GAL, the witness disclosed that she had not spoken to any of Jeremiah's previous caseworkers. {Supra, pp.10-11}.

Mr. Smith then called Respondent Courtney Hinkle, who gave a brief history of the case, and then stated that her aunt, Charel Stevens, was the current foster parent. {Supra, p. 14}. Mother testified that she did not observe the behavioral problems with Jeremiah that the aunt claimed to have had. Ms. Hinkle also said she had always had housing during the entire case. {Supra, pp. 17-18}. She had been employed almost continuously for the past two years. {Supra, p. 18}. Because she was paid by a personal check, she had shown her income tax returns for 2008 and 2009 to DHS for proof of income. {Supra p. 19}. Mother had a custodial plan for Jeremiah that included medical and educational care. {Supra pp. 19-49}. As to the guardianship being terminated, mother testified that the Judge observed her aunt, who was now the foster mother, fighting with her in the courtroom and terminated the guardianship. {Supra, pp. 56-57}. Under cross-examination from the Lawyer-GAL, mother testified that she wished that Jeremiah had continued to be placed originally with a foster family in Southfield. Mother testified she had to take multiple buses to get to the agency for visits. {Supra, pp. 64-65}. The Lawyer-GAL called the aunt, Charel Stevens. Courtney's mother had lost her parental rights to all four children. Courtney was adopted by Ms. Steven's sister, and there were problems. Eventually Ms. Stevens took Courtney in at around age sixteen. {Supra, pp. 120-122}. Most of Ms. Steven's testimony was a repeat of previous testimony during the adjudicative phase as to the guardianship, transporting Jeremiah, issues about groceries, and allegations of mother not providing clothing. Under cross

from the Prosecutor, the aunt claimed that since the child had not had contact with his mother, he had improved. She claimed that the child told her that he did not want to visit or talk to his mother. {Supra, pp.131-132}.

Under cross from the defense, Ms. Stevens said that she was licensed along with Ms. Kim Adkinson, who had moved out about a month ago be removed from the foster care license. {Supra, p. 137}. Ms Stevens then stated that Jeremiah's behavior had improved in the last month, but denied the connection between Ms. Adkinson leaving the home and the improvement. {Supra, pp. 138-139}.

The Court then heard closing arguments. {Supra, pp. 141-152}. The Court then proceeded to find that termination of parental rights served Jeremiah's best interests. The Court terminated the mother's parental rights, and from the order terminating her parental rights, Courtney Hinkle takes this appeal.

ARGUMENT I.

THE MICHIGAN COURT OF APPEALS AND THE TRIAL COURT ERRED IN TERMINATING PARENTAL RIGHTS IN THAT THERE WAS SIGNIFICANT INDICATION OF AMERICAN INDIAN HERITAGE, AND NEITHER DHS NOR THE TRIAL COURT COMPLIED WITH THE INDIAN CHILD WELFARE ACT, 25 USC 1901 ET SEQ.

Standard of Review: Determination as to compliance of a trial court with the Indian Child Welfare Act is reviewed *de novo*. **In re IEM,** 245 Mich App 181; 628 NW2d 570 (2001)

Issue Preservation: The trial court instructed the Oakland County Department of Human Services to investigate the issue of American Indian heritage as to the child, send notice, and put a copy of the results in the court file. {Tr. 5-22-08, pp. 27-28, Tr.9-22-08, pp. 9-11}. Oakland County DHS did not apparently follow the directives of the trial court

as the court file does not any indication of notice pursuant to the Indian Child Welfare Act, nor does the file contain any return communication from any Indian tribe or the Department of the Interior.

Discussion: Prior to any removal of a child and as part of every investigation after a referral to Child Protective Services, DHS is supposed to inquire if the child is a member of an American Indian tribe or is eligible for membership. Indian Child Welfare Act of 1978, A Court Resource Guide, 2011, Ex. 1. and DHS Policy Manual Item #716, to wit:

Item 716-1 p. 1- 4:

> **13.2. IDENTIFY NATIVE AMERICAN CHILDREN**
> In every investigation of alleged child abuse or neglect and in any other first contact situation with a child, such as a voluntary release of parental rights, the DHS worker is obliged to determine whether a child has Native American heritage.[3] If the worker receives any indication that a child may have Native American heritage, a child is to be considered an Indian child pending verification.[4] Where there is some indication that a child may be a Native American child, the DHS will contact the Appropriate Tribe(s) or the Bureau of Indian Affairs if tribal affiliation is not clear. DHS must contact the tribe, Indian organizations and, if necessary, the Bureau of Indian Affairs in the U.S. Department of the Interior to determine tribal membership or eligibility for tribal membership.[5]
> An "Indian child" for purposes of the ICWA and Michigan law means "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe."[6] Every tribe establishes its own eligibility guidelines.

In the instant case, the trial court removed the child without ensuring that the DHS had made adequate inquiry as based on the transcript of the hearing on a request by DHS for an Order To Take Into Custody. {Tr. 5-21-08}.

Although the Referee at that hearing did inquire of the petitioning CPS worker if the child had American Indian heritage, the worker merely said "No." {Tr. 5-21-08, p.7}. No testimony was offered by the worker nor solicited by the Referee as to what inquires the worker had made to determine that the child was not American Indian. Given that the child and mother had resided in the northern part of the Michigan's lower peninsula,

where there a several tribes located, the CPS worker should have been especially diligent as she had reason to know that there was a greater probability of Indian heritage than in the tri-county area. DHS's policy toward Indian children available on its Website holds that each CPS investigation must start with an inquiry into Indian heritage..

Thus, the child was removed without compliance with the **Indian Child Welfare Act, 25 USC 1901 et seq. 25 USC 1912** provides the standard for removal:

(e) Foster care placement orders; evidence; determination of damage to child

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses , that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Then at the preliminary hearing, the Referee conducted the entire hearing until the end without an inquiry the the trial court as to Indian heritage. At the end of the hearing, when the inquiry was finally made by the Referee, the mother informed the court, DHS, and all the attorneys that her family had tribal heritage her family is part of the Saginaw Chippew Indian Tribe in Mt. Pleasant and that her parents were members. {Preliminary Hearing, 5-22-08, pp. 27-28}. The Referee then ordered DHS to do an investigation and notify the tribe. {Supra, p. 28}. DHS failed to do that investigation at the beginning or the case prior to removal and apparently throughout the case.

That investigation was either never conducted, or if conducted, never made part of the record. Subsequently, Judge Anderson at the initial disposition asked about the American Indian heritage. The Appellant's biological mother, who was present in the courtroom, told that Court that she was awaiting her card. (Appellant was adopted by

maternal family members, whom mother stated at the preliminary hearing were tribal members of the Saginaw band of the Chippewa Tribe. Judge Anderson told DHS on the record to notify ICWA, which is not an agency, but the name of the statute) and obtain documentation from and place it in the court file as to the child's potential American Indian heritage. {Tr. 9-22-08, pp.9-11}. At a subsequent review hearing, the trial court still inquired as to why the court had still not heard from ICWA after the worker, claimed to have served ICWA. {Tr. 4-02-09, pp. 6-11}.

If the child may possibly eligible for trial membership or is a member then notice is required no matter how late in the proceedings. **In re TM (After Remand),** 245 Mich App 181; 628 NW2d 570 (2001). The individual tribe if known must be notified pursuant to **MCR 3.921(C),** which states

(C) Notice of Proceeding Concerning Indian Child. If an Indian child is the subject of a protective proceeding or is charged with a status offense in violation of MCL 712A.2(a)(2)-(4)or (d) and an Indian tribe does not have exclusive jurisdiction as defined in MCR 3.002(2):
(1) in addition to any other service requirements, the petitioner shall notify the parent or Indian custodian and the Indian child's tribe, by personal service or by registered mail with return receipt requested, of the pending proceedings on a petition filed under MCR 3.931 or MCR 3.961 and of their right of intervention on a form approved by the State Court Administrative Office. If the identity or location of the parent or Indian custodian, or of the tribe, cannot be determined, notice shall be given to the Secretary of the Interior by registered mail with return receipt requested. Subsequent notices shall be served in accordance with this subrule for proceedings under MCR 3.967 and MCR 3.977.
(2) the court shall notify the parent or Indian custodian and the Indian child's tribe of all hearings other than those specified in subrule (1) as provided in subrule (D). If the identity or location of the parent or Indian custodian or the tribe cannot be determined, notice of the hearings shall be given to the Secretary of the Interior. Such notice may be by first-class mail. {Underlining added}.

This attorney could not find any documentation in either the court's legal or social file that the Saginaw Band of the Chippewa tribe had been served, or had any notice been

given to any American Indian tribe or even the Department of the Interior. In the publication Indian Child Welfare Act of 1978: A Court Resource Guide 2011 (a publication by the SCAO), the point is made that if there is even a hint that the child may be part of an American Indian tribe, then notice must be given and it is not up to the state trial court to determine eligibility for tribal membership.

VI. Indian Child (MCR 3.002[5], 3.807, 5.402[E][1])

Only an Indian tribe can determine whether a child is a member of that tribe and, thus, an "Indian child" for purposes of the ICWA. Each tribe in Michigan has its own unique membership requirements. ICWA §1903(4) defines "Indian child" to mean: …any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe, or (b) is eligible for membership in an Indian tribe *and* is the biological child of a member of an Indian tribe. (Italics added) A child adopted by a family whose parents are members of a particular tribe, regardless of the child"s heritage by birth, may be subject to the ICWA if the child belongs to the adoptive parents" tribe or any other tribe. Contact each tribe for details on whom the tribe considers a citizen or member for purposes of the ICWA.
To determine whether a child is a member of a specific tribe, agencies should contact that tribe and provide as much information about the child as possible (e.g., the child"s name, the name of each parent, and the names of grandparents). If DHS caseworkers7 are providing services to the child, they will

In the case of Jeremiah Gordon, the Appellant was adopted by tribal members, and those adoptive parents were blood maternal relatives. The trial court should not have proceeded with even an Order To Take Into Custody without verification of the child's potential tribal affiliation. **25 USC 1912(e)** forbids foster care placement without a finding that *active efforts (*ie. a step beyond reasonable efforts) had been made to prevent removal *and* testimony by a qualified Indian expert. Ex. 1. Further, placement must be made close to a birthparent and with triable approval. **25 USC 1915(b).** Ex. 1 This is significant especially as the child was *placed* up north, but the mother was left *without adequate means of transportation* for a portion of the case to travel up north.

As to termination of parental rights, the burden of proof shifts from clear and convincing evidence to beyond a reasonable doubt and also requires the testimony of an Indian expert. **25 USC 1912(f).** Ex. 1, Copy of relevant parts of ICWA.

The Court of Appeals blatantly erred when it claimed that the proper tribe had been served, and that the trial court had ensured that Petitioner had complied with the Indian Child Welfare Act, to wit:

> The record in this case shows that petitioner complied with ICWA by sending notice to the appropriate tribe and received an acknowledgment from the tribe that the notice was received.T here is ample evidence that the tribe had actual notice of the proceeding. There is no substantiation for respondent's position. COA Opinion, p.

The Court of Appeals got the facts wrong by 180 degrees. The record was not ample, but devoid of notice to the appropriate tribe. Actually after the preliminary hearing, not one hearing officer even mentioned a specific tribe, but talked about notifying ICWA, which is not an agency. Actually, there was no substantiation of DHS's position.

Given the lack of notice to the Chippewa tribe, Saginaw band, from the inception of the case until the end in violation of **MCR 3.921(C)**, this matter should be remanded immediately. Given that the **Indian Child Welfare Act** changes every aspect from pre-removal services offered (requires active efforts, a step beyond reasonable efforts) to the burden of proof for termination, which changes to beyond a reasonable doubt and requires the testimony of an tribal social work effort, this matter should not proceed until the critical issue of the child's American Indian status is fully investigated. The Court of Appeals had no authority to conclude that the Appellant had waived the issue of American Indian heritage. It is the duty of the petitioner to comply with notice on behalf of the child.

ARGUMENT II

THE TRIAL COURT ERRED BY FINDING THAT CLEAR AND CONVINCING EVIDENCE HAD BEEN PRESENTED TO FIND THAT STATUTORY GROUNDS EXISTED SUFFICIENT TO TERMINATE THE APPELLANT'S PARENTAL RIGHTS.

Standard of Review: Termination of parental right cases are reviewed by a clearly erroneous standard. **MCR 3.977 (J)**; **In re Sours, Minors,** 459 Mich 624,633; 593 NW2d 520(1999). The trial court's finding is clearly erroneous when, despite evidence to support that finding, the reviewing court has been firmly and definitely convinced that a mistake has been made. **In re JK,** 468 Mich 202, 209-210; 661 NW2d 216 (203); **In re Miller,** 433 Mich 331,337; 445 NW2d 161(1989). Once at least one statutory ground for termination has been established by clear and convincing evidence, the trial court may terminate parental rights if the trial court finds that termination in the child's best interests. **MCL 712A.19b(5)**. Questions of law are reviewed de novo on appeal. **Jones v. Slick**, 619 NW2d 73(2000). The Court reviews unpreserved constitutional challenges for plain error affecting substantial rights. **People v. Carines,** 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Issue Preservation: The defense attorney continually argued against termination of Appellant's parental rights at the adjudicative phase.

This case is amazing for the snowball effect that a poor investigation done by Children's Protective Services can have. Reading over the preliminary hearing transcript, one is dumbfounded as to how little evidence and how investigation is necessary to remove a child. Even the Referee at the preliminary hearing mentioned that the allegations were not overwhelming.{Tr. 5-22-11, pp. 20-21}. The child had briefly been in a guardianship in another county; the judge in that county had terminated it

and returned Jeremiah to the mother. {Tr. 5-22-08, p. 17-18}. The child was accidentally burned, and mother took him to Hurley Hospital. Someone called in a referral stating the child needed to return, but the CPS worker had not even verified the medical information when she filed a petition. {5-22-08, p. pp. 12-13}.Hence the alleged medical neglect was not even substantiated prior to removal.

The evidence during the adjudicative phase of the supplemental petition was ridiculously repetitive, yet manifestly underwhelming similar to the evidence presented at the preliminary hearing. There were allegations that the mother did not have employment that had been verified, and yet she produced a tax return showing income. A worker was impeached at trial on the supplemental petition based on a report that she had written for a review in which she stated mother was employed. There was continual testimony about transportation problems, but while the agency was supplying bus tickets to the mother to travel up north, it was obtaining federal funds to provide transportation to the child's home under **Title IV-E** as a part of the foster care maintenance payments, under **42 USC 674(4)(A)**, to wit:

(A) The term "foster care maintenance payments" means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, **reasonable travel to the child's home for visitation**, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

Thus, the taxpayers were subsiding a private agency with casework responsibilities, but who acted irresponsibly, possibly fraudulently, when expending tax payer funds. Rather than transporting the child home for visits for part of the case, the agency gave mother bus tickets, which were not good beyond the tri-county area as admitted to by the DHS worker at trial. {Tr. 6-10-10, p. 113}. The funds were pocketed, and the lack of

transportation was used to justify termination of parental rights. A mistake has been made.

The transportation issue alone show a lack of reasonable efforts made by the agency to assist the mother in reunification. Further, as to her housing, mother always moved to better herself. At multiple reviews, a worker would state that the physical home was appropriate. Somehow the Appellant was blamed for the landlord's foreclosure at one place in a time in American history when foreclosures are rampant.

Mother had complied with a substantial portion of the case plan including parenting classes, counseling, and obtaining a psychiatric evaluation as testified to by a caseworker called by the Prosecutor. {Tr.6-29-10, pp.20-22}. That caseworker, Lisa Smith admitted that mother had benefitted from parenting classes. {Supra, pp. 18, 22}.

As to one of the other requirements- stable housing, mother had housing, but had moved several times, all to better places. One move had been caused by a foreclosure on her landlord. {Tr. 4-10-10, pp. 7-8}, 6-29-10, p. 43-45, 112}. The second caseworker even admitted during trial *that every time the mother's new residence was better than her previous one.* {Tr. 6-29-10, p. 64}. Yet, the Court of Appeals blatantly and wrongly concluded that mother did not get suitable housing throughout the case. Review after review, the workers would report that mother had appropriate housing. {Tr. 1-5-09, p. 5, Tr. 7-02-09, p.4, Tr. 10-09-09, p. 4}. Upward mobility is a core American principle; only an anti-parent panel could find that moving to a better place is evidence of chronic neglect.

The same blatant anti-parental prejudice resulting in incorrect findings by the Court of Appeals also was rampant as to employment. At one early review, the worker reported

mother's employment. At the first review in January 2009, the worker reported that mother was employed. {Tr. 1-5-09, p. 5}. At the October 9, 2009, review, the worker reported that mother was still employed. {Tr. 10-9-09, pp. 4-5-overnight visits recommended; Tr. 4-6-10, pp.7-8}.

Mother had employment, as the case plan mandated, although there was a continual allegation that she did not even after she produced a tax return. When confronted at trial with the actual documentation, the second caseworker Ms. Kalinowski *finally admitted that mother had previously shown her proof of income.* {Tr. 6-29-10, pp. 65-66, pp. 119-120}. Unfortunately, that type of truth-stretching, if not outright lying, was rampant throughout the case by the private agency workers. If a worker lies about documentation of a verifiable fact, a trial court should not find any other testimony from that same witness as persuasive especially on more nebulous issues, such as speculation that the mother may reunite with a boyfriend.

As to the conclusion of the Court of Appeals that the mother lacked emotional stability, the facts were anything but clear and convincing. The psychiatric evaluation early on in the case only diagnosed the mother with an adjustment disorder. No medication was recommended. There was no evidence of blatant mental illness or lack of cognitive functioning or depression, etc.{Tr. 1-5-09, p. 6}. Mother complied with the counseling. Further, the Michigan Court of Appeals folded in the best interests testimony from the Court Clinic psychologist and confused it with the finding of statutory grounds. No one review after review brought up any ongoing emotional problems as a barrier to reunification. What was brought up was that the workers did not like mother's choice in dog breeds or her friends who were there when the child was not. Mother had

one dog put down, and got rid of her two puppies long before the supplemental petition was filed.

Cross-examination of the workers, who by nature are negative as their agencies profit by keeping a child in care, demonstrated that mother's friends were not there routinely when the child visited. If mother was so emotionally unstable, why did Gladwin County DHS place mother's younger sister in her care during the course of the case? {Tr. 1-05-09, p.10}. If mother lacked emotional stability, why then did the trial court allow DHS discretion to unsupervised visits even after the permanency planning hearing? {Tr 4-8-10, p. 19-20}. Prior to a year after removal, the caseworker reported mother had complied with the case plan. {Tr. 7-02-09, p. 4}.

The mother substantially complied with the case plan, which is strong evidence of fitness as the Michigan Supreme Court held in **In re JK**, supra at 215.:

> **This Court has held that a parent's failure to comply with the parent-agency agreement is evidence of a parent's failure to provide proper care and custody for the child. *Trejo, supra* at 360-363. By the same token, the parent's *compliance* with the parent-agency agreement is evidence of her ability to provide proper care and custody.**[20]

Very little social work was done to assist the mother to reunify with her son, and yet she was compliant with most of the case plan. Clear and convincing evidence was not presented to justify a finding under any of the statutory grounds alleged, **MCL 712A. 19b(3)(c)(i), (g), and (j)**. It is one thing for the defense to lose because of the facts; it is another for the Court of Appeals to ignore the facts to justify a win for the state.

ARGUMENT III

THE COURT OF APPEALS AND TRIAL COURT ERRED IN FINDING THAT THE IT WAS IN THE CHILD'S BEST INTERESTS TO TERMINATE THE APPELLANT'S PARENTAL RIGHTS.

Even witnesses for the prosecution admitted that the mother had a bond with her son. That bond remained while mother had unsupervised visits with him during the course of the case. When she did not have unsupervised visits at her home, both the foster parent and the agency did nothing to encourage that bond. Even when the mother was hospitalized with pancreatitis and called the agency about missing her visits, she did not always get a return call. {Tr. 6-10-10, p. 27}. The foster mother, who was a great aunt to the child and clearly the mother felt her hatred, helped sabotage the relationship. The workers would swallow the foster mother's versions of the child's behavior. During the best interest phase, the worker Ms. Kalinowski, having given a recitation of problematic behaviors of the child and blamed those behaviors on the mother, admitted that she did not seek any psychological help for the child. {Tr. 6-10-10, pp. 61-62}.. Either the child did not really have the behaviors alleged, or the child should not be left in the care of the State of Michigan with such uncaring and incompetent workers.

The testimony of the Court Clinic Clinician Katherine Conti was highly speculative. {Tr. 10-25-10, pp. 15-16}. She had never bothered to observe the mother with the child,{Tr 1025-10, p. 34} and had not bothered to verify if DHS had approved the homes in which mother had lived. {Supra, pp. 25-26}. Further, she believed the untrue version that mother had not provided documentation of employment even though mother clearly had done so. {Supra, pp. 27-28}. What happens in these evaluations is that the Court Clinician calls the DHS worker and usually blindly accepts the DHS version of events as

true, even if proven to be otherwise at the adjudicative phase. Ms. Conti even admitted that her financial concerns were based on what DHS had said, not on what the mother had said. {Supra, p. 29}

Ms. Conti admitted that with aggressive care, the mother's symptoms of depression, could be overcome. {Supra p. 32-33}. No one through the course of the case ever informed the mother that her ten sessions of counseling could have been augmented, nor were there any referrals to additional counseling. Yet, the mother is now punished by having her rights terminated.

Perhaps the worst portion of the best interests phase was the Court's allowing a comparison between the foster home and the birthmother's home in violation of MIchigan law. {Tr. 11-1-10, p. 6, 129}. **In re JK,** the Michigan Supreme Court frowned upon that practice of comparing homes in child protective proceedings, to wit:

> [21] **Several of the trial court's written findings of fact on remand suggest that it may have been influenced by the relative advantages of the adoptive home compared to the mother's home. We remind the family-division judges of what we said nearly fifty years ago: "It is totally inappropriate to weigh the advantages of a foster home against the home of the natural and legal parents. Their fitness as parents and question of neglect of their children must be measured by statutory standards without reference to any particular alternative home which may be offered to the [child]." [*Fritts v Krugh*,354 Mich 97, 115; 92 NW2d 604 (1958).]**
>
> **We note the trial court's fact-finding on remand simply because it suggests that improper comparisons between the homes of the adoptive and natural parents may have been made in determining whether to terminate the respondent's parental rights. This type of comparison may explain why the respondent's parental rights were terminated despite what we believe is the lack of clear and convincing evidence in support of that termination. In re JK,** supra at 216.

The same improper procedure was used both in the adjudicative and best interest phase in the instant case. The best interests phase should have been about the mother and her son, not about the speculation by a clinician who had never met the child, and the wish by DHS to wash their hands of the matter by leaving the child with an aunt.

CONCLUSION AND RELIEF REQUESTED

The blatant disregard of the **Indian Child Welfare Act of 1978**, DHS policies toward investigation, and the callow attitude of all involved is reprehensible and must be rectified. What good does it do the child welfare system to have the wonderful SCAO publication regarding the Indian Child Welfare Act of 1978,[4] supra, if no one including a trial court even attempts to follow it? Even if the child turns out not to be American Indian, termination of mother's parental rights was not justifiable. She substantially complied with the case plan and could take care of her child.

Appellant requests that this Court accept this Application for Leave and the following:

1) That the order terminating parental rights be reversed;

2) That the case be remanded immediately to the trial court with an order that the trial court and the Michigan Department of Human Services comply completely with the **Indian Child Welfare Act, 25 USC 1901 et seq**. and all related Michigan statutes and court rules as to Indian children;

3) That this Court stay any efforts to place the child for adoption.

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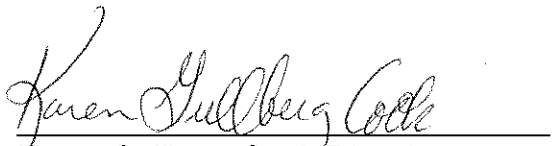
[4] I have cited the most current version, but early versions existed during the course of this case.

Respectfully submitted,



Karen Gullberg Cook P26141
Attorney for Appellant

STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
August 11, 2011

In the Matter of J. L. GORDON, Minor.

No. 301592
Oakland Circuit Court
Family Division
LC No. 2008-746988-NA

Before: CAVANAGH, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(*i*), (g), and (j). We affirm.

Before terminating a respondent's parental rights, the trial court must find that at least one of the statutory grounds under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). The trial court must order termination of parental rights if it finds that a statutory ground is proven and that termination is in the child's best interests. MCL 712A.19b(5). This Court reviews the trial court's determinations for clear error. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91, 126 n 1; 763 NW2d 587 (2009). To warrant reversal, the trial court's decisions must be more than maybe or probably wrong. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

The trial court did not clearly err in finding that MCL 712A.19b(3)(c)(*i*), (g), and (j) were established by clear and convincing evidence. The conditions that led to adjudication included respondent's unsuitable housing, financial instability, and emotional instability. Respondent had more than two years to provide a suitable home environment, achieve financial and emotional stability, and establish or maintain a parental bond with her son. There was sufficient evidence that petitioner provided respondent with reasonable services to facilitate reunifying the family. Offered services included psychological evaluations, psychiatric evaluation, individual and domestic violence counseling, parenting classes, parenting time, and transportation assistance.

The trial court properly concluded that respondent had not substantially complied with and benefited from her case treatment plan. Specifically, respondent failed to (1) maintain stable, suitable housing, (2) maintain regular, legal, and verifiable employment, (3) consistently attend court-ordered parenting time, and (4) establish or maintain a parental bond with the child. Failure to comply with a court-ordered case service plan is indicative of neglect. *In re Trejo*, 462 Mich 341, 360-361 n 16; 612 NW2d 407 (2000). A parent must benefit from services in order to

provide a safe, nurturing home for the child. *In re JL*, 483 Mich 300, 330-331; 770 NW2d 853 (2009).

Respondent failed to address the issues that led to adjudication. The trial court heard persuasive testimony from the case worker and the clinical psychologist that, despite support services, respondent's behaviors, particularly her poor judgment and decision making, remained unchanged. Additionally, the lawyer-guardian ad litem recommended termination of respondent's parental rights and told the court that she observed many instances where it seemed the child was not respondent's primary focus and interest. Other people and interests misdirected respondent's time, money, and attention away from the child, placing him at risk. There was ample evidence that respondent did not show any insight into what was important for the child. Rather than taking responsibility for problems, respondent blamed someone else. These proofs satisfied all three statutory grounds for termination.

Respondent argues that there was insufficient evidence to warrant termination of her parental rights. Respondent contends that she provided verification of her employment by producing a tax return showing her income. This assertion is not supported by the court record. During several of the dispositional review hearings and the termination hearing, petitioner raised the issue that it had not received written documentation of respondent's income. The case worker testified that, despite numerous requests, respondent had not provided any written verification of her employment with her boyfriend's family. Respondent testified that she was paid by personal check and had a bank account. Respondent provided extensive testimony of all the times that she had purportedly provided petitioner with a copy of her tax returns. Respondent claimed that she did not give a copy of any payment checks or her bank accounts because petitioner never asked for them. Respondent's financial stability was clearly a pivotal issue in this case. A person of at least average intelligence, as respondent was clinically tested to be, would understand that employment could be verified by providing copies of personal checks and bank account statements or even a letter from the employer. Respondent asserts that actual documentation was provided at the termination hearing. However, that document was merely a self-report of income by respondent for food stamp eligibility, not a verification of income by a third party.[1] The lack of any such readily accessible documentation in the court record undercuts respondent's credibility. The trial court reasonably concluded that such documentation did not exist because respondent was not gainfully employed and, thus, remained financially unstable.

Respondent argues that she had complied with the treatment plan by obtaining suitable and stable housing. Respondent admitted that she had moved at least four times within the past year, explaining that each move was to a better place, except for one which was because of a foreclosure on the landlord. There was ample evidence that respondent's housing was unsuitable for a child. At the time of removal, respondent was living with a known gang member in a condemned house without electricity and water. The court had ordered that other people and several pit bull dogs seen in the home were not to be present when the child was visiting. However, there was credible evidence, including the case worker's testimony and the lawyer-

[1] Respondent did not move to have this document admitted into evidence.

guardian ad litem's statements, that the dogs and other people were present, including respondent's boyfriend who had a pending charge for attempted murder and respondent's mother who had an extensive protective services history. Respondent failed to grasp the risks that aggressive dogs and people with criminal and protective services histories posed on the child's safety and welfare. In the months leading up to the termination hearing, respondent lived in a dwelling that was infested with raccoons and subsequently condemned. Respondent admitted that she postponed weekly visits because she did not have enough food in the house. At the time of the termination hearing, respondent's newly acquired residence lacked the basic necessities for a child. Respondent claimed that the child's belongings were at the previous residence but that she did not have a way of moving them to the new home. The court noted that she had found a way to move her own belongings. The clinical psychologist opined that respondent's pattern of selecting inappropriate housing would likely continue if the child were returned to her care. There was sufficient evidence to support the trial court's finding that respondent had not obtained and maintained suitable housing as required in her treatment plan.

Respondent also contends that reasonable efforts to reunify her with the child were not made. It is well established that petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights. See MCL 712A.18f; MCL 712A.19(7); *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000). Respondent claims that she was not provided with adequate transportation for parenting time. It was undisputed that the foster parent initially transported the child to respondent's home for weekly visits. In early 2010, visitation was changed from unsupervised in respondent's home to supervised visitation at petitioner's Flint office. Respondent acknowledged at the termination hearing that the case worker offered respondent the needed bus passes if she came to the agency. The trial court also noted that respondent was able to find transportation to go to Cedar Point and travel to Detroit to get a dog yet claimed she could not get transportation to petitioner's office. Respondent also argues that petitioner failed to provide respondent with more aggressive treatment for depression, pointing to the clinical psychologist's testimony that respondent would benefit from additional treatment. However, the psychologist also stated that respondent's depression symptoms were not severe at the inception of the case when the psychological evaluation occurred, respondent had already received counseling, and she was taking antidepressants. The trial court properly concluded, during seven dispositional review hearings and at the termination hearing, that petitioner made reasonable efforts to reunify respondent with her child.

Respondent next argues that the trial court erred when it ruled that termination of her parental rights was in the minor child's best interests and improperly relied on highly speculative testimony. See MCL 712A.19b(5). This Court reviews the trial court's determination regarding the child's best interests for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357. A trial court may consider evidence on the whole record in making its best interest determination. *Id.*

The trial court record establishes that termination of respondent's parental rights was clearly in the child's best interests. Respondent's inability to provide her child with the basic needs of food, clothing, suitable housing, and medical care led to the adjudication. Respondent's behaviors and circumstances, despite reunification services over two years, remained unchanged. Respondent was still incapable of providing the child with a safe and stable home because of her limited income and continued poor parental judgment.

Respondent claims that the foster parent, respondent's aunt, hated respondent and helped sabotage respondent's relationship with the child. This argument is groundless. At the time of the child's removal, respondent's relationship with the child was tenuous at best. Respondent acknowledged that the foster parent was very cooperative in trying to improve the relationship between respondent and the child, who had spent nearly all of his first year in the foster parent's care. After removal, the child remained in foster care for more than two years, and respondent's contact with him consisted of weekly visits, averaging five to six hours, and a brief time when overnight visitation was permitted. However, in January 2010, respondent began to miss visits or request shorter weekly visits, and she did not maintain consistent telephone contact with the child. Further, the child exhibited troubling behavior shortly after the overnight visitations with respondent began, including fits of rage and urinating and defecating on his toys and around the house despite being toilet trained. These behaviors nearly ceased when the child was no longer in contact with respondent and reemerged when contact with respondent resumed. The court reasonably concluded that the child's distressing behavior was linked to his contact with respondent. The clinical psychologist who evaluated respondent before the best interest hearing concluded that the child and respondent were not bonded and that termination of her parental rights was in the child's best interests and would give him needed permanency. The trial court, weighing the evidence on the whole record and considering the credibility of the witnesses, did not clearly err in finding that it was in the child's best interests to terminate respondent's parental rights.

Respondent asserts that the trial court erred in comparing the foster home to respondent's home in violation of Michigan law. Once a statutory ground for termination is established, a court may consider the advantages of an alternative home for the child in evaluating the child's best interests. *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009). Nothing in the lower court record suggests that the trial court inappropriately weighed the advantages of the foster home against respondent's home when determining whether the statutory grounds for termination had been satisfied. The trial court properly considered the foster parent's testimony when adjudicating the child's best interests.

Respondent argues that the trial court erred when it failed to address respondent's claimed Native American heritage pursuant to the Indian Child Welfare Act of 1978 (ICWA), 25 USC 1901 *et seq*. Issues regarding the interpretation and application of ICWA present questions of law that this Court reviews de novo. *In re Fried*, 266 Mich App 535, 538; 702 NW2d 192 (2005). Respondent did not object to the manner in which the ICWA notice was given or to the insufficiency of documentation in the lower court record until this appeal. This Court has previously held that substantial compliance with the notice requirements of the ICWA is sufficient where the trial court record established that the appropriate tribes received actual notice, and that no tribe came forward to intervene in the proceedings. *In re TM (After Remand)*, 245 Mich App 181, 190-191; 628 NW2d 570 (2001). The record in this case shows that petitioner complied with ICWA by sending notice to the appropriate tribe and received an acknowledgment from the tribe that the notice was received. There is ample evidence that the tribe had actual notice of the proceeding. There is no substantiation for respondent's position that the trial court did not adequately adhere to ICWA. Given respondent's own statement in court that she received a response that she and her son were not eligible for tribal membership, the trial court was relieved from embarking on further ICWA tribal notification efforts. Therefore, respondent has failed to show any error requiring remand for further inquiry or reversal.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder
/s/ Donald S. Owens

APPROVED, SCAO

Appendix B

JIS CODE: OFE

STATE OF MICHIGAN 6TH JUDICIAL CIRUCUIT – FAMILY DIVISION OAKLAND COUNTY	ORDER FOLLOWING HEARING TO TERMINATE PARENTAL RIGHTS, PAGE RECEIVED AND FILED

CASE NO. 08-746988-NA P. 1

"OAKLAND" "COUNTY" 08-746988-NA

Court address 1200 N. Telegraph Road, Pontiac, MI 48341

JUDGE LISA GORCYCA
IN THE MATTER OF GORDON,JEREM

1. In the matter of (name(s), alias(es), DOB) Jeremiah Leeramond GORDON, 05-09-07

2. Date of hearing: November 1, 2010 Judge/Referee: LISA GORCYCA, P47882 Bar no.

3. Removal date: May 21, 2008 (Specify for each child if different.)
Date

4. An adjudication was held and the child(ren) was/were found to come within the jurisdiction of the court.

5. A petition to terminate parental rights has been filed and notice of hearing on the petition was given as required by law.

6. Specific findings of fact and law regarding this proceeding have been made on the record or by separate written opinion of the court.

THE COURT FINDS:

7. ☒ a. Reasonable efforts were made to preserve and unify the family to make it possible for the child(ren) to safely return to the child(ren)'s home. Those efforts were unsuccessful.
   ☐ b. Reasonable efforts were not made to preserve and unify the family because it was previously determined in a prior court order to be detrimental to the child(ren)'s health and safety.
   ☐ c. Reasonable efforts were not required to preserve and reunify the family as determined in a prior court order. (This requires a permanency planning hearing within 28 days.)

☐ 8. The child(ren) is/are Indian as defined in MCR 3.002(5).
   ☐ a. Active efforts have not been made.
   ☐ b. Active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. These efforts have proved unsuccessful and there is evidence beyond a reasonable doubt, including qualified expert witness testimony, that continued custody of the child(ren) by the parent(s) or Indian custodian will likely result in serious emotional or physical damage to the child(ren).
   ☐ c. Active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. These efforts have proved successful and there is not evidence beyond a reasonable doubt, including qualified expert witness testimony, that continued custody of the child(ren) by the parent(s) or Indian custodian will likely result in serious emotional or physical damage to the child(ren).

9. There is clear and convincing evidence that a statutory basis exists for terminating the parental rights of

Courtney Hinkle, mother, parent(s) of the child(ren).
Name(s) of parent(s)

10. Termination of parental rights ☒ is ☐ is not in the best interests of the child(ren).

(SEE SECOND PAGE)

NOTE: If a child remains in foster care and parental rights are terminated in accordance with MCL 712A.19a(2), a permanency planning hearing must be held within 28 days. If proper notice has already been given, the permanency planning hearing can be conducted immediately following the termination hearing. This is especially useful in obtaining a uniform date for future permanency planning hearings when parental rights have been terminated to more than one child and the removal dates of the children are different. Use form JC 76.

USE NOTE: Do not use this form when terminating parental rights after release pursuant to the adoption code.

Do not write below this line – For court use only

Amended 11-4-10 KL

App B p. 2

Approved, SCAO

JIS CODE: TRP

STATE OF MICHIGAN 6TH JUDICIAL CIRUCUIT – FAMILY DIVISION OAKLAND COUNTY	ORDER FOLLOWING HEARING TO TERMINATE PARENTAL RIGHTS, PAGE 2 ORDER 1 OF 1	CASE NO. 08-746988-NA PETITION NO.

Court address 1200 N. Telegraph Road, Pontiac, MI 48341 Court telephone no. (248) 858-0112

1. In the matter of Jeremiah Leeramond GORDON

IT IS ORDERED:

☒11. The parental rights of Courtney Hinkle, mother
Name(s) of parent(s)
are terminated, and additional efforts for reunification of the child(ren) with the parent(s) shall not be made.

☒12. ☐a. The child(ren) is/are continued in the temporary custody of this court and remain in placement with the Department of Human Services for care and supervision.

☒b. The child(ren) is/are committed to the Department of Human Services for permanency planning, supervision, care, and placement under MCL400.203.

☐13. The Director of the Michigan Department of Human Services is appointed special guardian to receive any benefits now due or to become due the child(ren) from the government of the United States.

☒14. Other: (Include reimbursement provisions as required by MCL 712A.18[2], attach separate sheet.)
The Lawyer Guardian Ad Litem shall comply with the Order of Appointment and MC 712A.17d
Child support ☐ shall ☐ shall not be continued.
Court finds it is in the best interest of the child to terminate the parental rights of the child's mother, Courtney Hinkle.
Court finds that child has no legal father.

15. The court reserves the right to enforce payments of reimbursement that have accrued up to and including the date of this order.

☐16. The supplemental petition to terminate the parental rights of _____ is denied.
Name(s) of parent(s)

17. A ☒ review hearing ☐ permanency planning hearing will be held 11-22-10 @ 8:30 a.m. before Judge Gorcyca.
Date

Recommended by: _____
Referee signature

11-4-10
Date

Judge LISA GORCYCA, P47882

Indian Child Welfare Act of 1978: A Court Resource Guide

ICWA Special Committee

State Court Administrative Office

March, 2011

Identifying an Indian Child or Indian Tribe; Notification Requirements
MCR 3.802(A), MCR 3.905, MCR 3.920, MCR 3.921, MCR 5.109, MCR 5.402(E)(3)

To ensure compliance with the ICWA, state courts must determine: (1) whether the child appearing before the court is an "Indian child" (2) if so, to which tribe the child belongs and (3) if the child is eligible for membership in multiple tribes, which tribe the ICWA designates as "the Indian child's tribe."

I. Is the Child an "Indian Child" for Purposes of the ICWA?

ICWA §1903(4) defines an "Indian child" as someone who is (1) under the age of 18 and unmarried, and *either* (a) a member of a federally recognized Indian tribe, *or* (b) the biological child of a member of an Indian tribe ***and*** eligible for membership in any federally-recognized Indian tribe.[13]

The best way to identify an "Indian child" and determine the tribal affiliation is to contact the tribe and inquire. ***The tribe's determination of membership or eligibility for membership is conclusive.***

Ask the DHS Caseworker About a Child's ICWA Status

MCR 3.935(B)(5) and MCR 3.965(B)(2) requires courts to "inquire if the child or either parent is a member of any American Indian tribe or band." If so, the court "must determine the identity of the child's tribe."

If a court has assigned a DHS caseworker to the case, that caseworker will have access to this information. Caseworkers must determine at the outset whether a child is an "Indian child" for purposes of the ICWA. DHS POLICY instructs caseworkers to work with tribes to meet this requirement. SCAO recommends that courts verify specific steps taken by the DHS caseworker to determine the child's American Indian status. This will significantly reduce the risk of discovering the child's Indian heritage at an advanced stage in the proceedings, thereby causing significant delays and wasting court time.

If No DHS Caseworker has Been Assigned to the Case

Not all state court child welfare matters will involve DHS caseworkers. For example, filing a petition for a limited or full guardianship will not automatically cause DHS to become involved. See MCR 5.404(A).

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[13] The court in *In re Fried*, 266 Mich App 535 (2005), held that the ICWA does not apply if the Indian child's tribe is not federally recognized.

APPENDIX 2

ICWA, 25 U.S.C. §§ 1901 *et seq.* (2000)

CHAPTER 21—INDIAN CHILD WELFARE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 941h, 1300j–7, 1653, 1727 of this title; title 42 sections 622, 674, 1996b.

§ 1901. Congressional findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes[1]" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies

[1] So in original. Probably should be capitalized

and that an alarmingly [illegible] percentage of such children are placed [illegible] non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

(Pub. L. 95–608, § 2, Nov. 8, 1978, 92 Stat. 3069.)

SHORT TITLE

Section 1 of Pub. L. 95–608 provided: "That this Act [enacting this chapter] may be cited as the 'Indian Child Welfare Act of 1978'."

§ 1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

(Pub. L. 95–608, § 3, Nov. 8, 1978, 92 Stat. 3069.)

§ 1903. Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt [illegible] uncle, brother or sister, brother-in-law or [illegible]ster-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43;

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(Pub. L. 95–608, § 4, Nov. 8, 1978, 92 Stat. 3069.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1727, 3202, 3653, 4302 of this title; title 12 section 4702; title 26 section 168.

P. 1

SUBCHAPTER I—CHILD CUSTODY PROCEEDINGS

§ 1911. Indian tribe jurisdiction over Indian child custody proceedings

(a) Exclusive jurisdiction

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; declination by tribal court

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) State court proceedings; intervention

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

(Pub. L. 95–608, title I, § 101, Nov. 8, 1978, 92 Stat. 3071.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1914, 1918, 1923 of this title.

§ 1912. Pending court proceedings

(a) Notice; time for commencement of proceedings; additional time for preparation

In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided*, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) Appointment of counsel

In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

(c) Examination of reports or other documents

Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Remedial services and rehabilitative programs; preventive measures

Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) Foster care placement orders; evidence; determination of damage to child

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) Parental rights termination orders; evidence; determination of damage to child

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(Pub. L. 95–608, title I, § 102, Nov. 8, 1978, 92 Stat. 3071.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1914, 1916 of this title

§ 1913. Parental rights; voluntary termination

(a) Consent; record; certification matters; invalid consents

Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Foster care placement; withdrawal of consent

Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody

In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) Collateral attack; vacation of decree and return of custody; limitations

After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

(Pub. L. 95–608, title I, § 103, Nov. 8, 1978, 92 Stat. 3072.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1914 of this title.

§ 1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title.

(Pub. L. 95–608, title I, § 104, Nov. 8, 1978, 92 Stat. 3072.)

§ 1915. Placement of Indian children

(a) Adoptive placements; preferences

In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Foster care or preadoptive placements; criteria; preferences

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences

In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: *Provided*, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable

The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) Record of placement; availability

A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of

preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

(Pub. L. 95–608, title I, § 105, Nov. 8, 1978, 92 Stat. 3073.)

§ 1916. Return of custody

(a) Petition; best interests of child

Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 1912 of this title, that such return of custody is not in the best interests of the child.

(b) Removal from foster care home; placement procedure

Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

(Pub. L. 95–608, title I, § 106, Nov. 8, 1978, 92 Stat. 3073.)

§ 1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

(Pub. L. 95–608, title I, § 107, Nov. 8, 1978, 92 Stat. 3073.)

§ 1918. Reassumption of jurisdiction over child custody proceedings

(a) Petition; suitable plan; approval by Secretary

Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) Criteria applicable to consideration by Secretary; partial retrocession

(1) In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 1911(a) of this title are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 1911(b) of this title, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 1911(a) of this title over limited community or geographic areas without regard for the reservation status of the area affected.

(c) Approval of petition; publication in Federal Register; notice; reassumption period; correction of causes for disapproval

If the Secretary approves any petition under subsection (a) of this section, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a) of this section, the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Pending actions or proceedings unaffected

Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title.

(Pub. L. 95–608, title I, § 108, Nov. 8, 1978, 92 Stat. 3074.)

REFERENCES IN TEXT

Act of August 15, 1953, referred to in subsec. (a), is act Aug. 15, 1953, ch. 505, 67 Stat. 588, as amended, which enacted section 1162 of Title 18, Crimes and Criminal Procedure, section 1360 of Title 28, Judiciary and Judicial Procedure, and provisions set out as notes under section 1360 of Title 28. For complete classification of this Act to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1727, 1923 of this title.

§ 1919. Agreements between States and Indian tribes

(a) Subject coverage

States and Indian tribes are authorized to enter into agreements with each other respect-

ing care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Revocation; notice; actions or proceedings unaffected

Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

(Pub. L. 95–608, title I, §109, Nov 8, 1978, 92 Stat. 3074.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1918, 1923 of this title.

§1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child; danger exception

Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

(Pub. L. 95–608, title I, §110, Nov. 8, 1978, 92 Stat. 3075.)

§1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

(Pub. L. 95–608, title I, §111, Nov 8, 1978, 92 Stat. 3075.)

§1922. Emergency removal or placement of child; termination; appropriate action

Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

(Pub. L. 95–608, title I, §112, Nov. 8, 1978, 92 Stat. 3075.)

§1923. Effective date

None of the provisions of this subchapter, except sections 1911(a), 1918, and 1919 of this title, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

(Pub. L. 95–608, title I, §113, Nov. 8, 1978, 92 Stat. 3075.)

SUBCHAPTER II—INDIAN CHILD AND FAMILY PROGRAMS

§1931. Grants for on or near reservation programs and child welfare codes

(a) Statement of purpose; scope of programs

The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;

(4) home improvement programs;

(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) Disclosure of information for enrollment of Indian child in tribe or for determination of member rights or benefits; certification of entitlement to enrollment

Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

(Pub. L. 95-608, title III, §301, Nov. 8, 1978, 92 Stat. 3077.)

§1952. Rules and regulations

Within one hundred and eighty days after November 8, 1978, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter.

(Pub. L. 95-608, title III, §302, Nov. 8, 1978, 92 Stat. 3077.)

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§1961. Locally convenient day schools

(a) Sense of Congress

It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b) Report to Congress; contents, etc.

The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health and Human Services, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from November 8, 1978. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

(Pub. L. 95-608, title IV, §401, Nov. 8, 1978, 92 Stat. 3078; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

CHANGE OF NAME

"Department of Health and Human Services" substituted for "Department of Health, Education, and Welfare" in subsec. (b), pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

Select Committee on Indian Affairs of the Senate redesignated Committee on Indian Affairs of the Senate by section 25 of Senate Resolution No. 71, Feb. 25, 1993, One Hundred Third Congress.

Committee on Interior and Insular Affairs of the House of Representatives changed to Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress. Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§1962. Copies to the States

Within sixty days after November 8, 1978, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this chapter, together with committee reports and an explanation of the provisions of this chapter.

(Pub. L. 95-608, title IV, §402, Nov. 8, 1978, 92 Stat. 3078.)

§1963. Severability

If any provision of this chapter or the applicability thereof is held invalid, the remaining provisions of this chapter shall not be affected thereby.

(Pub. L. 95-608, title IV, §403, Nov. 8, 1978, 92 Stat. 3078.)