SBM State Bar of Michigan | CHILDREN'S LAW SECTION

Report on Public Policy Position

Name of section:
Children's Law Section

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Regarding:
An Amicus Brief in Mason County Department of Human Services vs. Darroll D. Rood (SC 136849)

Date position was adopted:
September 19, 2008

Process used to take the ideological position:
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11 Voted for position
1 Voted against position
0 Abstained from vote
0 Did not vote

Explanation of the position, including any recommended amendments:
See the attached document.

STATE OF MICHIGAN
SUPREME COURT
Appeal from the Michigan Court of Appeals

IN THE MATTER OF:	Supreme Court No. 136849
AYDEN ROOD, DOB 04-16-2004	Court of Appeals No. 280597 Lower Court No. 06-019-NA, Mason County Family Court

Mason County Department of Human Services,

Petitioner/Appellant,

vs.

Darroll D. Rood,

Respondent/Appellee.

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THE CHILDREN'S LAW SECTION OF THE MICHIGAN STATE BAR'S AMICUS CURIAE BRIEF

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AMICUS CURIAE'S STATEMENT OF INTEREST

The Children's Law Section is a recognized section of the State Bar of Michigan. The Section has over 400 members who are attorneys and judges working together in Michigan's child welfare system. The attorneys represent children, parents, the Department of Human Services, and the People of the State of Michigan in child abuse and neglect proceedings. Working together, the Section's members make crucial decisions each day that directly and substantially affect the lives of children and families.

The Section's governing council consists of Section members elected by the membership to represent their interests. On September 19, 2008, at the Section's annual meeting, the Section Council voted 11-1 to authorize the preparation of an amicus brief in *In re Rood*, the case now before this Court.

The Section members' expertise is in precisely this narrow area of the law from which this case arises. That expertise is highly relevant to the decision this Court faces. No other group of lawyers or non-lawyers is more appropriately situated to help this Court make the decision it must make to ensure a just outcome for Ayden Rood, his family, and the people of this state.

The position taken in this Amicus Brief is the Section's alone. It does not represent a position taken by the State Bar of Michigan. To the best of the Section's knowledge, the State Bar of Michigan has not taken a position in this case.

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STATEMENT OF PROCEEDINGS AND FACTS

Amicus Curiae accepts the statements of proceedings and facts as set forth by the Michigan Court of Appeals in *In re Ayden Rood*, unpublished decision per curium of the Court of Appeals, entered on June 12, 2008 (Docket No. 280597).

QUESTIONS PRESENTED

1. Did the DHS and the trial court fail to make reasonable efforts to reunify the child with his father?

Trial Court Says:	No
Court of Appeals Says:	Yes
Petitioner/Appellant Says:	No
Respondent/Appellee Says:	Yes
Amicus Curiae Says:	Yes

2. Does the agency's failure to make reasonable efforts to reunify a child with his parent warrant the reversal of the termination of parental rights order?

Trial Court Says:	No
Court of Appeals Says:	Yes
Petitioner/Appellant Says:	No
Respondent/Appellee Says:	Yes
Amicus Curiae Says:	Yes

ARGUMENT

Ayden Rood's legal relationship with his birth father, Darrell Rood, was terminated despite the failure of the agency[1] and the trial court to make any effort to involve Mr. Rood in Ayden's life. Amicus Curiae, the Children's Law Section of the State Bar of Michigan, respectfully requests this Court to adopt an unremarkable position: That before a child is permanently deprived of the legal right to maintain a relationship with a parent, the child welfare system must make reasonable efforts to reunify the child with that parent.[2] Michigan child welfare statutes and court rules support this position as do decisions by courts across the country. Since the uncontroverted evidence demonstrates that these efforts were simply not made in this case, the Court of Appeals' decision reversing the termination order should be affirmed.

I. The DHS And The Trial Court Had An Obligation Under Michigan Statutes And Court Rules To Make Reasonable Efforts To Reunify The Child With His Father, Which They It Failed To Make.

The constitutional rights of children to maintain relationships with their parents have been long recognized by the United States Supreme Court. *See Quilloin v Walcott,* 434 US 246, 255; 98 S Ct 549; 54 L Ed 2d 511 (1977) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected."); *Santosky v Kramer*, 455 US 745, 760; 102 S Ct 1388; 71 L Ed 2d 599 (1982) ("[T]he child and his parents share a vital interest in preventing erroneous termination of their natural relationship."). Numerous federal courts have similarly recognized both the existence and import of the child's right to associate with his parents. *See Wallis v Spencer*, 202 F 3d 1136 (9th Cir 1999) ("Parents and children

[1] "Agency" is defined in the Juvenile Code as the public or private organization "that is responsible under court order or contractual arrangement for a juvenile's care and supervision." MCL 712A.13a(a). In this case, the agency responsible for Ayden Rood's care was the Department of Human Services.

[2] Michigan law contains certain exceptions to the statutory mandate to make "reasonable efforts." MCL 712A.19a(2). No party, however, is arguing that any of these exceptions apply in this case nor did the trial court make a finding that "reasonable efforts" were not required.

have a well-elaborated constitutional right to live together without government interference."); *Smith v City of Fontana*, 818 F 2d 1411, 1418 (9th Cir 1987) (overruled in part on other grounds) ("The companionship and nurturing interests of parent and child in maintaining a tight familial bond are reciprocal, and we see no reason to accord less constitutional value to the child-parent relationship than we accord to the parent-child relationship."); *Wooley v City of Baton Rouge*, 211 F 3d 913, 923 (5th Cir 2000) ("[A] child's right to family is concomitant to that of a parent"). As noted by the Second Circuit in the seminal case of *Duchesne v Sugarman*, 566 F 2d 817, fn 19 (2nd Cir 1977), "[T]he reciprocal liberty interest of parent and child in the familial bond between them needs no greater justification than that they comport with each state's fundamental constitutional commitment to individual freedom and human dignity."

The sanctity of the family is protected by the Constitution "precisely because the institution of the family is deeply rooted in this Nation's history and tradition." *Michael H v Gerald D*, 491 US 110, 123-124; 109 S Ct 2333; 105 L Ed 2d 91 (1989). A child's liberty interest in familial integrity implicates his or her interest in a normal family home, in psychological and emotional stability, and in developing and maintaining a relationship with his or her parents. The importance of this right, often described as the oldest and most fundamental of the liberty interests recognized by the Court, "stems from the emotional attachments that derive from the intimacy of daily association, and from the role it plays in 'promoting a way of life' through the instruction of children." *Smith v Organization of Foster Families*, 431 US 816, 844; 97 S Ct 2094; 53 L Ed 2d 14 (1977). The creation of a constitutionally protected zone of family autonomy allows children to develop nurturing relationships and receive guidance from their parents who occupy a unique role in their lives.

Consistent with these principles, the Michigan legislature, in drafting the Juvenile Code, recognized the primacy of the family in a child's life. Even in instances where allegations of child abuse or neglect are made, the Code explicitly instructs courts to liberally construe statutory provisions "so that each juvenile coming within the court's jurisdiction receives the care, guidance, and control, preferably in his or her home, conducive to the juvenile's welfare and the best interest of the state." MCL 712A.1(3); MCR 3.902(B)(1). The entire statutory framework emphasizes the importance of protecting children from unnecessarily being separated from their parents and the first priority in nearly every case is to expedite the exit of children from foster care by returning them to their family. MCL 712A.19a(5) (requiring courts to return a child to his parents unless evidence exists that the return would "cause a substantial risk of harm to the child.").

As such, when a child is separated from his parents and is placed in foster care, the Juvenile Code is unambiguous as to what must occur. Absent limited exceptions that are inapplicable in this case, "[r]easonable efforts to reunify the child and family must be made in all cases." MCL 712A.19a(2) (emphasis added). The language in the Juvenile Code stems from federal child welfare statutes - the Adoption Assistance and Child Welfare Act and the Adoption and Safe Families Act - which condition the receipt of federal funding on states establishing plans that require reasonable efforts to preserve and reunify families so that a child can safely return to his family. 42 USC 671(a)(15). The federal government, in imposing this requirement, sought to ensure that, prior to the expenditure of federal funds for foster care, "no child would be placed in foster care who could be protected in his/her home." DHS Children's Protective Services Manual 715-2. States were directed to act as quickly as possible to ascertain the

viability of reunification and to use reasonable efforts to achieve that goal so that children could avoid protracted foster care.

Although the statute unequivocally imposes a requirement to make "reasonable efforts" to reunify the family, the challenge lies in defining what precisely that means since the term is left undefined under both federal and Michigan law. The primary goal of statutory interpretation is "to ascertain the legislative intent that may be reasonably inferred from the words expressed in the statute." *Timmis & Co v Guardian Alarm Co*, 468 Mich 416; 662 NW 2d 710 (2003). If the language of the statute is clear, the Court may presume that the Legislature intended the meaning expressed. *Id.* If the statute does not define a word, the Court may consult dictionary definitions to determine the plain and ordinary meaning of the word. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW 2d 34 (2002).

Here, the common definition of the words "reasonable" and "efforts" convey a clear sense of what is required. "Reasonable" is defined to mean "not extreme or excessive" or "sensible." Webster's New World Dictionary 1183 (2d ed. 1986). "Effort" is defined as a "conscious attempt to achieve a particular end," "using of energy to get something done" or "a hard try." *Id.* at 444. Thus, read together, a state fulfills its statutory obligation to make reasonable efforts towards reunification if it makes a sensible and conscious attempt to reunify a parent with a child prior to seeking to terminate parental rights. For example, the Michigan DHS lists as types of reasonable efforts the provision of services such as parenting classes, in-home services, and mental health services and also "[e]fforts . . . to locate an absent parent." DHS Children's Foster Care Manual 722-6. What the reasonable efforts requirement does not permit is for the "[D]epartment to be passive when it removes children from their parents' custody. [It] requires the Department to bring its skills, experience, and resources to bear in a reasonable way

to bring about the reunification of the family." *In re Tiffany B*, 228 SW 3d 148, 160 (Ct App Tenn 2007).

The notion that the "reasonable efforts" requirement imposes a mandate on both child welfare agencies and courts to take affirmative steps to assist parents in regaining custody of their children is supported by a close examination of related provisions in Michigan laws and court rules. Within thirty days of a child's removal from his home, the DHS must prepare an initial service plan which includes "the background of the child and the family," "an evaluation of the experiences and problems of the child," "a projection of the expected length of stay in foster care," and "an identification of specific goals and projected time frames for meeting the goals." MCL 712A.13a(8); MCR 3.965(E). DHS policy requires the engagement of the parents in the drafting of the plan, which means an open conversation between the parents and case worker to discuss needs and strengths and to reach an understanding of what is entailed in meeting the goals of the service plan. DHS Children's Foster Care Manual 722-6. The Department itself notes that "[p]arental engagement is an invaluable tool for achieving early return home of children from foster care." *Id.*

If children are placed in foster care, the statute also imposes an affirmative obligation on the DHS within 30 days of removal to "identify, locate, and consult with relatives to determine placement with a fit and appropriate relative who would meet the child's needs." MCL 722.954a(2). The DHS' decision regarding the suitability of the placement must be documented in writing and notice of that decision must be given to the child's parents. *Id.* Although the statute does not include parents within the definition of a relative, MCL 712A.13a(1)(j), one can only conclude that the agency's obligation to identify alternatives to foster care for a child would necessarily include considering each parent as a placement option since birth parents

possess superior custodial rights to the child than relatives. Again, this provision envisions an active, vibrant child welfare agency taking steps to explore ways in which the child can exit the foster care system.

The agency's statutory obligations at other points in the case further confirm this role. At the dispositional hearing, if the agency recommends that the child remain in foster care, it must report in writing to the court what efforts were made to prevent the child's removal from his or her home and the efforts made to rectify the conditions that caused the child's removal from the home. MCL 712A.18f(1). Among other facts, the report must include the services that were provided, why services were not provided, the likely harm of separating the parent and the child and the likely harm of returning the child home. *Id.* Additionally, the agency must prepare a case service plan which details the "efforts to be made by the agency to return the child to his or her home" as well as the "[s]chedule of services to be provided to the parent . . . to facilitate the child's return to his or her home." MCL 712A.18f(3). As long as the child remains out of the home, the statute requires the agency to update and revise the case service plan every 90 days to ensure that the most relevant services are being provided. MCL 712A.18f(5). Unless exceptional circumstances exist as defined in MCL 712A.19a(2), nowhere does the statute permit the agency to assume a passive approach to reunification.

The statute and court rules impose a similar responsibility on the juvenile court to actively work with each parent to develop a plan to expedite the child's exit from foster care. If a request is made to remove a child from his home prior to the preliminary hearing, the court must inquire whether a member of the child's immediate or extended family is available to take custody of the child, MCR 3.963(B)(3). Each parent is entitled to notice of the preliminary hearing as soon as the hearing is scheduled, MCR 3.920(C)(2)(B), and is also entitled to written

notice of every subsequent hearing in the child protective case regardless of whether allegations of abuse or neglect are made against them. MCR 3.921(B)(1)(d); MCR 3.921(B)(2)(c); MCL 712A.19(5); MCL 712A.19a(4). The court has the responsibility of providing notice of the hearings to each parent. *Id.*

At the preliminary hearing, the court must return the child to his parents unless specific evidence exists demonstrating that placement with the parent is "contrary to the welfare of the child," MCR 3.965(C)(2), and the parent possesses the right to contest that finding by presenting evidence. MCR 3.965(C)(1). If placement in foster care is ordered, the court must place the child in the "most family-like setting available consistent with the child's needs," MCR 3.965(C)(2), must provide each parent with frequent parenting time, MCR 3.965(C)(6), and must inform each parent of the agency's obligation to prepare an initial services plan within 30 days, MCR 3.965(E). Again, even when children enter foster care, the law instructs courts to actively involve parents in the process.

In addition to having the responsibility to provide written notice of all subsequent hearings to each parent, the statute and court rules also mandate courts to actively review the case plan developed by the agency and permit each parent the opportunity to advocate for changes to that plan. Prior to the entry of this dispositional order, the court must receive and review the agency's case plan, MCL 712A.18f(4), consider any written or oral information concerning the child from the child's parent, *id.*, and determine whether reasonable efforts were made to rectify the conditions that caused the child to be removed, MCL 712A.18f(1). Based on the information it receives, the court can modify the case plan as it sees fit in the dispositional order. MCL 712A.18f(4).

At each subsequent review hearing, the court has similar responsibilities. It must review the case plan which includes an assessment of what services were offered to the parent, MCR 3.975(F)(1), allow parents to submit information relevant to the child's best interest, MCR 3.975(E), and determine "the extent of the progress made towards alleviating or mitigating conditions that caused the child to be, and to remain, in foster care," MCR 3.975(F)(2). The only way the court could make such a determination would be through the active engagement of both of the child's parents in the decision-making process.

Finally, at the permanency planning hearing, the court again is tasked with ensuring that sufficient measures have been taken to give each parent the opportunity to reunify with the child. At or before each hearing, "the court must determine whether the agency has made reasonable efforts to finalize the permanency plan," which at the outset of a child protection case is almost always reunification with a parent. MCR 3.976(A). Prior to making a decision regarding the permanency goal in the case, the court must provide an opportunity for each parent, both of whom are entitled to written notice of the hearing, to submit written or oral evidence to the court. MCR 3.976(D)(2). And if adequate efforts to reunify the child were not made by the agency, the court retains the discretion not to order a petition to terminate parental rights even if the child has remained in foster care for more than fifteen months. MCL 712A.19a(6)(c).

The obligations that Michigan law imposes on both the agency and the court to make reasonable efforts to reunify a child with his parents are clear. Again, the statute unambiguously reads, "Reasonable efforts to reunify the child and family must be made in all cases." MCL 712A.19a(2). The agency has the task of providing those efforts to each parent and the court monitors the quality of those efforts by providing notice to each parent, permitting them to provide evidence about themselves and their children, and making determinations about the

adequacy of the agency's efforts and plan for reunification. The Michigan legislature has determined that through this proactive process, the interests of children will be best served.

The error in this case lies in the fact that these efforts were not made by either the DHS or the trial court. Within a few days of Ayden's placement into foster care, on learning from the mother about the child's foster care placement, the father called the protective services worker and advised her of his address and cell phone number, which the protective services worker passed along to the assigned foster care worker. *In re Ayden Rood*, unpublished decision per curiam of the Court of Appeals, entered on June 12, 2008 (Docket No. 280597), at 2. Yet the assigned foster care worker made no efforts to work with the father and during the first several months of the dispositional phase of this case, her efforts consisted of one phone call to the father, which failed to connect because the number was no longer in service. *Id.* The record, however, indicates that the worker called an outdated telephone number listed in the agency's service plans, and no explanation was provided as to why she did not call the other telephone number provided by the father. *Id.* The foster care worker also failed to contact the father through the mail, despite being aware of his address. *Id. at 3.* Her first effort to contact the father via mail occurred in December 2006, nine months after Ayden entered foster care. *Id.* After this mailing was returned as undeliverable, the foster care worker made only one more inquiry concerning the father's whereabouts before the filing of the termination of his parental rights. *Id.* In this case, the agency simply acted as if Ayden only had one parent, his mother.

The trial court also abdicated its responsibility to ensure that the father was given the opportunity to actively participate in the case. The record indicates that the father did not receive proper notice for at least four of the court hearings and that the father appeared at every hearing for which he received notice. *Id.* at 3. At each hearing, the record also fails to show that the trial

court actively inquired of the agency's efforts to involve the father in the case, as the statute requires. No doubt exists that the father should have made more efforts to participate in the proceeding and assumed greater responsibility for Ayden upon learning that his son was in foster care. But regardless of the culpability that he certainly bore, his inaction does not excuse the agency's total failure to make any effort to involve him in the case and to remedy any barriers that prevented him from caring for his child. The complete failure to make any efforts towards reunification cannot be deemed reasonable. As such, both the agency and the trial court violated Ayden's rights under Michigan law.

II. Reversing An Order Terminating A Parent's Rights Is The Appropriate Remedy When The Agency Fails To Make Any Efforts To Reunify A Child With His Parent.

For several reasons, the state's failure to provide reasonable efforts to a parent should preclude the entry of a termination order against that parent. First, such a holding furthers the interests of both the child and the state in preventing the erroneous termination of a parent's rights. Second, this remedy ensures that the state's important policy goals furthering reunification and maximizing federal funding for the child welfare system will be protected. And finally, such a remedy accords with what courts across the country have done when confronting similar situations.

A. The Reasonable Efforts Requirements Helps To Ensure That A Termination Of Parental Rights Is Truly In The Child's Best Interests

Both the United States and Michigan Supreme Courts have recognized that cases involving the involuntary, permanent termination of parental rights are "unique in the kind, the degree, and the severity of the deprivation they inflict." *In re Sanchez*, 422 Mich 758, 766; 375 NW 2d 353 (1985). A decision to terminate parental rights is both total and irrevocable, and,

unlike other custody proceedings, it leaves the child with no legal right to visit or communicate with his parent. It is not surprising that this forced dissolution of the parent-child relationship "has been recognized as a punitive sanction by courts, Congress and commentators," *id.* at 766, and has been described by many as the equivalent of a "civil death penalty." *See, e.g.*, *ME v Shelby County Dep't of Human Resources*, 972 So 2d 89, 102 (Ct Civ App Ala 2007); *In re Tammila G*, 148 P 3d 759, 763 (Nev 2006); *In re KAW*, 133 SW 3d 1, 12 (Mo 2004). As such, enhanced due process protections are provided to parents facing such actions, pursuant to statutes, court rules and constitutional mandates.

Courts have recognized that both the state and children have an interest in preventing the erroneous termination of a parent's rights. In *Stanley v Illinois*, 405 US 645; 92 S Ct 1208; 31 L Ed 2d 551 (1972), the Court observed that "the State registers no gain towards its declared goals when it separates children from the custody of fit parents." *Id.* at 652. Similarly, in *Santosky v. Kramer*, *supra*, the Court determined that "until the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship." *Id.* at 760. When the State needlessly separates children from their families, it "spites its own articulated goals." *Stanley*, *supra*, at 653.

The "reasonable efforts" requirement is one way to ensure that termination of parental rights is reserved for the most serious of cases, in which a parent is completely unable to care for his child despite efforts to remedy his shortcomings. It provides the parent an opportunity to demonstrate his capacity to parent after receiving state services and permits children to have the greatest opportunity to be in their parent's custody. This sentiment is clearly captured in Michigan law which excuses the mandatory filing of a TPR petition by the state even after the child has remained in foster care for fifteen months if the state has failed to make reasonable

efforts to reunify the family. MCL 712A.19a(6)(c). The underlying rationale of this provision is that the making of reasonable efforts gives everyone the assurance that the termination of parental rights, a drastic remedy of last resort, is truly necessary to protect the child's interests.

This case demonstrates this point. The record reveals that Mr. Rood was responsibly caring for another young child at the time of the case and expressed an interest in caring for Ayden. *Rood, supra,* at 4. He made the initial effort to contact child protective services, *id.* at 3, and each time the trial court provided him with notice of the proceeding, he appeared in court. *Id.* As the Court of Appeals concluded, Mr. Rood "likely would have become involved in the child's life had petitioner contacted him in a timely manner and properly informed him of these proceedings." *Id.* at 4. Yet, because the state failed to make "reasonable efforts" to involve him in the case, the court had no ability to assess whether Mr. Rood would be an appropriate parent to Ayden.

B. Reversal is Required to Protect The State's Policy Goals

Permitting a trial court to terminate a parent's rights despite the state's failure to make reasonable efforts would seriously undermine the state's goal of reunifying children with their parents. As stated earlier in the brief, the primary goal articulated in the Juvenile Code is to ensure that "each juvenile coming within the court's jurisdiction receives the care, guidance, and control, preferably in his or her own home, conducive to the juvenile's welfare," MCL 712A.1(3), and the entire statutory framework is designed to give children every opportunity possible to return to the custody of their parents. The "reasonable efforts" requirement furthers this goal by mandating that child welfare agencies take affirmative steps to bring families together even when temporary dislocation is necessary. Affirming a termination of parental rights order despite the agency's complete failure to make any effort to place a child with his

father would excuse the agency's malfeasance and would only encourage child welfare workers to ignore parents despite the statutory mandates since no consequences would attach to their actions.

Strong protection for the "reasonable efforts" language is also required to ensure that the state is able to maximize its federal child welfare funding. If state agencies do not take this requirement seriously, then trial courts will inevitably be forced to make findings documenting the agency's failures. Under federal laws, if the agency fails to make reasonable efforts, then the state will lose the right to claim eligibility for federal funds to cover the costs of the child's stay in foster care and may be subject to more serious financial penalties. 45 CFR 1356.21(b)(1). This state's financial struggles are well-documented. Children in foster care need the assurances that case workers are taking all actions to bring adequate resources to the system. Reaffirming the importance of the "reasonable efforts" requirement will send an unequivocal message of what is required.

C. Courts Across The Country Analyzing This Issue Have Determined That Reversal Of The Termination of Parental Rights Order Is the Appropriate Remedy When The State Fails To Make Reasonable Efforts To Reunify The Family.

The consensus among state courts across the country is that the reversal of the TPR order is the appropriate remedy where the agency fails to make reasonable efforts to reunify the child with that parent. Courts in Delaware, Louisiana, Florida, California, Iowa, Tennessee, Connecticut, Alabama, Minnesota and Wyoming[3] have all held accordingly and undersigned

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[3] *See Waters v Division of Family Services*, 903 A 2d 721 (Del 2006); *In the Interest of AT*, 936 So 2d 79 (La 2006); *TM v Department of Children and Families*, 905 So 2d 993 (Ct App Fla 2005); *In re Alvin R*, 108 Cal App 4th 962 (Ct App Ca 2003); *In re Monica C*, 31 Cal. App 4th 296 (Ct App Ca 1995); *In the Interest of AL*, 492 NW 2d 198 (Ct App Iowa 2007); *In the Interest of MMM*, unpublished decision of the Court of Appeals of Iowa, entered on January 31, 2007 (Docket No. 6-1042/06-1768); *In re Tiffany B*, 228 SW 3d 148 (Ct App Tenn 2007); *In re JordenJordan R*, 944 A 2d 402 (App Ct Conn 2008); *In re Shaiesha O*, 887 A 2d 415 (App Ct Conn 2005); *HH v*

counsel could not locate any cases in which an appellate court affirmed a TPR decision despite the agency's failure to take active steps towards reunification. Importantly, in none of these cases did the father's culpability excuse the agency's inaction or justify affirming the termination order. As articulated by the Florida Court of Appeals, "[T]he initiative of the parent does not excuse the Department's complete lack of effort in fulfilling its statutory duty." *TM v Department of Children and Families,* 905 So 2d 993, 998 (Ct App Fla 2005). The common principle emerging from these cases is clear. "The requirement of reunification efforts. . . places a concomitant burden on the state to take appropriate measures designed to secure reunification of parent and child. . . . This requirement is based on the well settled notion that [t]he right of a parent to raise his or her children [is] recognized as a basic constitutional right." *In re Jordan R,* 944 A2d 402, 411 (App Ct Conn 2008).

This Court should join the national consensus and hold that a child welfare agency's complete failure in making efforts to reunify a child with his parent, where such efforts are required by the statute, warrants the reversal of the TPR order. Again, as stated in the outset of this brief, Amicus Curiae is not asking this Court to compel the DHS or the trial court to do anything other than what is already required under the Juvenile Code. Current statutory language clearly emphasizes the importance of reunifying families. At a minimum, this obligation includes 1) providing each parent with notice of every hearing in the child protective

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Baldwin, 2008 Ala Civ App LEXIS 124 (2008); *In the Matter of the Welfare of the Child of NH*, unpublished decisions of the Court of Appeals of Minnesota, entered on December 4, 2007 (Docket No A07-1106); *In re FM*, 163 P 3d 844 (Wyo 2007).

case, and 2) complying with the duty to make reasonable efforts to reunify the family. Since neither occurred in this case, reversal of the trial court's order is required.

Respectfully submitted,

Vivek S. Sankaran
Attorney for Amicus Curiae