FILED
1993
CLERK

IN THE COURT OF APPEALS OF IOWA

No. 2-322 / 92-315

IN THE INTEREST OF L.M.O., A Minor Child,

L.R. and R.O., Natural Parents,

Appellants.

Appeal from the Iowa District Court for Cass County, Gary K. Anderson, District Associate Judge.

The parents appeal a juvenile court decision terminating their parental rights. **AFFIRMED BY OPERATION OF LAW.**

W. Edward Anstey of Anstey Law Firm, Atlantic, for appellants.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, and Kathrine S. Miller-Todd, Assistant Attorney General, for appellee State.

Lawrence S. Jones of Cambridge, Feilmeyer, Landsness, Chase & Jones, Atlantic, guardian ad litem for the child.

Heard by Donielson, P.J., and Hayden and Habhab, JJ., but decided en banc.

PER CURIAM

The court being equally divided, the judgment is affirmed by operation of law. Iowa Code § 602.5106(1) (1991).

AFFIRMED.

For affirmance: Donielson, Hayden, and Habhab, JJ.

For reversal: Oxberger, C.J., and Schlegel and Sackett, JJ.

Hayden and Sackett, JJ., write separately.

HAYDEN, J.

This court was equally divided on this case: three judges voted to affirm the juvenile court, and three judges voted to reverse the juvenile court. When a case is decided on a three-to-three basis the trial court decision is affirmed by operation of law. Iowa Code § 602.5106(1) (1991). I write in an attempt to clarify the record before this court.

With regard to L.M.O.'s health at the time of her removal, evidence shows L.M.O. was a healthy three-month-old child. The record shows the parents failed to follow a doctor's advice to have a one-week check-up following L.M.O.'s birth, failed to have the child examined by a doctor since birth, and failed to have the child's two-month immunizations administered. L.M.O. suffered burns in the foster home when she pulled a simmering pot off a cabinet, and water from it spilled on her. The record shows L.M.O. may choose to pursue skin grafting in the future; however, this procedure is deemed an "option" only. The record does not indicate grafting will be necessary. There is no indication in the record of the number of children in the foster home at the time of the accident or that L.M.O. had been receiving inadequate care in the foster home.

I also address the allegations reasonable efforts were not made to reunite this family. A review of the record

clearly shows reasonable efforts were made. Problems with the family unit were identified, and DHS provided services to help parents deal with them. One day after L.M.O. was removed from her parents' home a DHS worker recommended the parents participate in at least chemical dependency and psychological evaluations and parenting education at an intake conference. By suggesting participation in these programs the worker was identifying problem areas within the family unit. Services were offered to the parents; however, they continued to refuse them or used them sporadically. The services offered by different organizations included the following: individual therapy, chemical dependency evaluations, parenting classes, domestic violence evaluation, family-centered services, and supervised visitation. The lack of effort to reunite this family was the fault of the parents. Their attendance was irregular, cooperation minimal, and contact with their daughter sporadic as they canceled appointments and visitations, failed to attend visitations for the allotted time, failed to attend at all and eventually left Iowa without notifying DHS or individuals responsible for the care of L.M.O.

Sherry Toelle, a DHS worker, was asked whether the department had made any efforts to transfer custody of L.M.O. to a DHS closer to the parents' residence in Kentucky. Ms. Toelle responded "[t]hat [a transfer] has not been suggested." Ms. Toelle's statement was in

reference to the following incident. In an October 29, 1990, order, the juvenile court encouraged parental visitation with L.M.O.; however, it stated with regard to a transfer:

> since the natural parents have voluntarily absented themselves from the State of Iowa, it [was] not appropriate to transfer the minor child in foster care in the State of Iowa in order that the Iowa authorities can monitor visitation between the minor child and the natural parents and make adequate report back to the Court concerning visitation.

The court and the DHS were not overlooking the option of a transfer; however, because the parents had voluntarily left Iowa the court found such a transfer was inappropriate. Iowa Code section 232.102(7) states DHS "shall make every reasonable effort to place the child in Iowa . . . and in close proximity to the parents' home, consistent with the child's best interests and special needs. Iowa Code § 232.102(7) (1991) (emphasis added). The court ordered further evaluations and parenting-child development classes. Due to the parents' abrupt departure in mid-November of 1989, the Iowa DHS referred these services to the Kentucky DHS. The parents failed to inform anyone of their departure or their subsequent whereabouts. In mid-December of 1989 the Iowa DHS tracked down the parents and advised them to seek the services of the Kentucky DHS. Iowa DHS also sent a protective service referral to Kentucky DHS. As of January 19, 1990, L.M.O.'s parents had not yet contacted Kentucky DHS. On January 24, 1990,

Kentucky DHS, without the request of L.M.O.'s parents, initiated services to the parents. As of April 24, 1991, the parents had participated in only parenting classes in Kentucky. They had not completed domestic violence and substance abuse evaluations. The evidence clearly shows services continued to be offered, and Iowa DHS attempted to keep in contact with the parents in an attempt to reunite the family. Thus, reasonable efforts of reunification were made.

One need only look at the facts to see supervision between L.M.O. and her parents was warranted. Two older children had already been removed from this home after suffering serious injuries while in the custody of the parents. One half-sibling of L.M.O.'s suffered a double skull fracture, and the other suffered a broken arm. L.M.O. was adjudicated a child in need of assistance pursuant to Iowa Code section 232.6(b). This section defines a child in need of assistance as an unmarried child "[w]hose parent . . . has physically abused or neglected the child, or is imminently likely to abuse or neglect the child." The court found L.M.O. was imminently likely to be injured or neglected as a result of abuse at the hands of her mother. The parents also had a history of noncompliance and actively trying to avoid contact with the DHS and other protection services. The parents made verbal threats of violence, bodily harm, and even death to the worker during the visits The record is also replete with

examples of times in which the parents failed to take full advantage of visitation opportunities. Our courts must act in the best interests of the child in custodial situations. Iowa R. App. P. 14(f)(15).

I take special issue with the comments regarding the Iowa courts' assessment of Kentucky's child protection programs. There is an allegation the Iowa courts have "denigrated" Kentucky standards. I emphasize this language is that of parents' counsel and is not supported in the record and not inferred by the trial court or this court on appeal. Our courts in no manner impugn the integrity of the Kentucky courts or DHS. Neither the juvenile court nor this court indicated Kentucky lacked adequate child protection programs. There is no evidence anywhere in the record of such an allegation. In fact, the juvenile court stated the child protection standards of Kentucky "[are] not before the Court, nor [are they] of concern to this Court."

SACKETT, J.

The juvenile court terminated the parental rights of Laura and Roger to Linda. Three judges voted to affirm the lower court, and three judges voted to reverse the lower court. The case, therefore, is affirmed by operation of law.

This is the second time this case has been before me, and I have spent innumerable hours combing the record. I write separately in length documenting where possible my writing with portions of testimony and exhibits. As my writing discloses, my extensive review has caused me concern for what has happened in this case. I write to explain the reason for my vote. Two other members of this court have also voted as I have to reverse the case. And I know they too have done so only after an extensive review of the record.

My extensive review convinces me the case should be reversed and remanded with directions to transfer the child to Kentucky so that reunification of this family can begin under the direction of the Kentucky Department.

This case involves a child I will call Linda, who was born on February 13, 1989. She was taken from her parents' home by the State of Iowa when she was three months old. Linda was never abused by either parent. When removed from her parents' care, Linda was normal in every respect. Linda's parents had few material possessions but their

apartment was very clean. While they slept on the floor, their daughter's room was well furnished and contained items necessary for her care. Since the removal, Linda's parents have only been allowed contact with Linda through supervised visitation. Linda has remained in foster care homes. She suffers emotional problems because of inconsistent bonding in the first six months of life, and she has scars from burns she received when she pulled hot water down on herself because of inadequate supervision in a foster home where there were a number of children. Linda's parents now live in Kentucky and, according to reports from the Social Services in Kentucky, are very adequately parenting two children.

Linda was removed because Linda's mother had had her parental rights to two other children terminated. The children had different fathers. One child suffered a fractured skull and the second child suffered a broken arm. No court ever found the mother inflicted the injuries. The children were found to be children in need of assistance.

The issue of whether Linda's removal was justified came before us in an earlier appeal. I concurred with the removal, but, in a special concurrence, said after an extensive review of the record, I could neither determine the mother had or had not committed acts that injured her other children. With hindsight, and recognizing the good care these parents are giving Linda's younger siblings, I am

not certain I made the correct decision in voting to affirm the removal of Linda from her parents' home.

The case now before us is an appeal by the parents from an order terminating their parental rights to Linda.

The juvenile court terminated parental rights finding there was clear and convincing evidence that Linda was abandoned by her parents and that her parents failed to cooperate with the delivery of services. I cannot agree with these findings. Rather, I find that reasonable efforts were not made to keep Linda with her family. I am disturbed that Linda was injured because of inadequate supervision while she was in foster care. I have grave difficulty understanding why a September 1990 report from Social Services in Kentucky directed to the Iowa Department of Human Services that supported reunification of the family was not made available to the Iowa juvenile court or the parents and why when there had been contact with the Kentucky Department of Social services and those contacts supported reunification the Iowa worker, Sherry Toelle, testified under oath there had been no contact with the Kentucky Department.

During the proceedings, the parents moved to Kentucky. The mother was pregnant and the parents were concerned that the Iowa Department of Human Services was intent in also removing from their care at birth their unborn child.[1] In

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1. Counsel for appellants asked Sherry Toelle (a social worker for the Iowa Department of Human Services) at the October 30, 1990 hearing the following questions:

Q. At the time that the parents left the area of their

retrospect, I find that a removal of that child would not have been justified because there is ample evidence in the record that Linda's parents are currently adequately parenting this child and another child.[2] I would reverse

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own accord, was the mother pregnant? A. Yes, she was.

Q. And did she express some concern about what your department was going to do in the event that she had another child here in the jurisdiction? A. Yes, she did.

Q. And I believe that it's been your testimony that on the evidence you had at that time, you would have carried through with that program to remove the second child as well; is that correct? A. I would have made that recommendation to the court most probably, yes.

2. On August 6, 1990, the Department of Social Services of the Commonwealth of Kentucky reported about appellant parents to Sherry Toelle of the Cass County Department of Human Services as follows: "This is to update you on the services that are being provided for, and the progress of Roger and Laura, who are the parents of Linda. Since the last written correspondence to your office, the family has been receiving services from our agency which were outlined to you in the treatment plan which was sent to you in the last correspondence. The two have been more than cooperative and have completed all of the tasks of their treatment plan with the exception of a psychological evaluation and substance abuse screening, which was completed by Mental Health Services. The psychologist would not complete the evaluation unless he could be guaranteed that he would not have to testify to his findings.

In July of 1990 this case was reviewed. As far as this agency was concerned, there was not a need for a child protective service case to remain open as there was not a protective service need for the child in the home. The parents, however, requested that the case remain open for two reasons, (1) that they wished to complete the remaining parenting classes and child development education, and (2) that they feel that if Linda is returned to them, they will need supportive services. Though the Department for Social Services has received no child protective service reports, this case will remain open for continued services at the request of the family. (Emphasis added).

The family has moved to a housing complex in Murray, Kentucky. The couple has resided there since May, 1990. Roger has recently become employed as a maintenance personnel at the apartment complex where they reside. He is gainfully employed and we have received no concerns from his employer.

The child, (boy born after they moved to Kentucky), who is now six months old, is in good health. The child appears

the termination and order Linda be returned to her parents' care under the supervision of the Department of Social Services in the State of Kentucky where the parents now reside.

When the matter of removal came to us on appeal, I found the family's problems have never been clearly identified and reasonable services have never been offered.

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happy and is meeting his developmental milestones. The support service aide and myself have observed the parents to have a nurturing relationship with the child. /s/ Michelle Stigall, Family Services Worker."

On September 5, 1990, the following letter was written.

"We received a referral from the Iowa Social Services in January of 1990. It was in January, 1990, that Marshall County Kentucky Departments for Social Services began providing services to the family. There has been ongoing services provided by a support service aide and a social worker to the family on a weekly or bi-weekly basis since that time. The family has complied with and completed the treatment plan. The case was reviewed in July, 1990 and though there was not a need for a child protective services case to remain open, the family requested the services continue.

The parents have their seven month old son in their care and custody. This child is healthy and is well cared for by his parents.

On the basis of our involvement with the family over the past several months and the progress that they have made in this time, we are approving this family for placement of their child, Linda. If the child is returned to the parents, services will continue to be provided to the family until it is felt by the agency that services are no longer needed."

I now note that while the matter was pending on appeal, no efforts were made to return the child to her parental home, rather, the filings indicate the child was to be left in foster care while the appeal was pending. Even while the appeal was pending, efforts should have been made to reunite this family.[3]

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3. At the October 30, 1990 hearing, counsel for appellants asked Sherry Toelle, the following questions:

Q. One of the reasons -- in fact the primary reason for the last order of Court in this matter on reviewing and modification was that the matter was still pending before the Supreme Court and that no contact had been established between Laura and the child; is that correct? A. Correct.

* * *

Q. What efforts, if any, has the department made to transfer custody of Linda to a Department of Human Services closer to the residence of the mother? A. That has not been suggested.

* * *

Q. And would it be in the child's best interest to secure a foster home placement in greater physical proximity to the mother in order to facilitate that visitation? A. I'm not certain if that would be in the child's best interests. I know that the parents left the area of their own accord, you know. I don't know if they would want to move back here or if we need to move the child there.

* * *

Q. Now, Miss Toelle, with regard to their involvement with the [Kentucky] Department of Human Services, I believe their worker down -- Michelle Stigall, S-T-I-G-A-L-L, I believe, and she forwarded back to you a report that they had completed certain programs, isn't that correct? A. That they were involved in those programs in the parenting and nurturing.

Q. And that as far as she was concerned, the younger sibling who was given birth in Kentucky was being properly and adequately cared for? A. Yes.

* * *

Q. Do you have the means available to you to investigate the availability of placement in Ms. Stigall's jurisdiction to facilitate the visitation between Linda and her natural mother? Does your department have that capability? Through your Interstate Compact system, that can be evaluated? A. Yes.

Q. I believe there was also an indication that a mental evaluation was to be performed on the natural mother as part of the program that you had established; is that correct? A. I believe in Judge Abel's original

My continued review of this record continues to convince me that the problems that needed to be corrected were never identified. And with hindsight and recognizing the care the parents have given their other two younger children, I am not certain the right decision was made in removing Linda. Linda had not been harmed when she was removed from her parental home and the only conclusion I can draw from this record is that her younger siblings have excellent care.

I recognize much is made of hostilities the parents had with the Iowa Department of Human Services. Parents in these situations are expected to cooperate with department personnel. But, I cannot criticize the parents for being upset with Linda's removal and the fact that their contact with Linda was limited to supervised visitation. Nor, can I criticize Linda's parents for being unhappy about the foster care home where Linda was placed. Linda's parents were of the opinion that the foster care mother was caring for too

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dispositional order, he did not feel further psychological evaluation was necessary because past records had shown she was not a good candidate for therapy. However, it is usually included as part of a domestic violence evaluation.

Q. And was there part -- was there mention of a problem with obtaining such a review in Kentucky because of the unwillingness of medical professionals to become involved in potential litigation? A. With -- As far as I know, the one therapist that was contacted indicated that. I have no knowledge if there are other resources available.

many children and could not provide adequate supervision and nurturing. The parents had a legitimate concern. Linda, while under the supervision of the foster mother, pulled hot water down on herself and suffered burns that resulted in an extended hospitalization and will require skin grafting in her later years. Additionally, testimony at the termination trial indicates that Linda suffers from inconsistent bonding during the first six months of her life. While the department seeks to blame this problem on the parents, I would find the problems were the result of the second three months of Linda's life when she was placed in a foster care home with a number of children.[4] I am very disturbed about

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4. Appellants' counsel asked the following questions of Sherry:

Q. -- you've mentioned an attachment disorder. What exactly is that, please? A. Dr. Beischel had originally diagnosed Linda to be an anxiously attached child. Attachment is developed within the first six months of life. He did not feel based on case history and observations by Ms. Ott who had supervised visitation between the parents and Linda, that the parents had the parenting and nurturing ability to help form that attachment.

Q. Now, is this attachment disorder a continuing situation for the child? A. More and more as permanency is not provided to the child, it is continued to be disrupted and she will continue to need some therapy for attachment.

Q. Okay. And correct me if I'm wrong, but you folks took that child when she was three months old? A. That's correct.

Q. Right in the middle of this supposed attachment? A. Yes.

Q. Would it be possible from that to argue that the responsibility for that disorder, like the responsibility for the only physical injuries that this child has ever sustained, rests with the department and its caretakers? A. I would not conclude that, no.

Q. Even though you were the ones who broke up the period of attachment, right? A. The Court ordered her into foster care. During the visitation we attempted to assist Laura and Roger in their parenting, however, they did not appear to have the capability to provide the nurturing that

the physical and emotional harm Linda has received in the Iowa foster care system.

What causes me the gravest concern in this case is that shortly after the adjudication was affirmed by this court and the case returned to the juvenile court, a letter came from the Department of Social Services in Kentucky. The parents had moved to Kentucky. This letter, dated September 5, 1990, was a clear directive from the Kentucky Department of Social Services that Linda be returned to her parents under the supervision of the Kentucky department. The Iowa Department of Human Services did not make this letter available to the court. In fact, the court was not made aware of the letter until over one year later when at the October 1991 termination hearing the report was produced pursuant to a subpoena by the parents' counsel. I have serious difficulty believing the department inadvertently neglected to give this letter to the court during the October 1990 hearing. At the October 1991 termination hearing, after Sherry Toelle had received the September 1990 letter, she was asked:

> Q. Okay. Miss Toelle, I'm going to hand you what has been marked as Exhibit 47 (August 22, 1990 report of Iowa Department of Human Services) and admitted into evidence and it's the document we discussed earlier today, I believe, but would

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Linda needed during those visits.

you confirm that fact for the Court, please? A. This is a report that was received in our office late in September 1990, I believe.

Q. Do you have that report with you pursuant to the subpoena? A. Yes, I do.

Q. And does that report indicate when it was received by your office? A. September 27th, 1990.

Q. Okay. Now, your Exhibit 25 (September 5, 1990 letter from Kentucky Department of Social Services) bearing date of 9/4/90 included reports clear up till the 1st of October of '90; is that correct? A. Yes.

Q. And that would have been subsequent to your receipt of that particular document, which had been denominated as Exhibit 47, is that also correct? A. Yes.

Q. And was Exhibit 47 presented to the Court for its review/modification hearing of October 30th, 1990? A. No, it was not.

Q. Would you please bear with me, Ms. Toelle, and read unnumbered paragraph four at the bottom of page one of Exhibit 47. A. Paragraph four?

Q. The last paragraph, ma'am. A. Okay. "On the basis of our involvement with the family over the past several months and the progress that they have made in this time, we are approving this family for placement of their child, Linda. If the child is returned to the parents, services will continue to be provided to the family until it is felt by the agency that services are no longer needed."

Q. And the Court was never apprised of that, were they? A. Inadvertently that was not submitted to the Court.

Q. Yet on October 30th, is it not true that the Court was petitioned for that very act, to return Linda to someplace so she could visit with her parents? A. I think you had requested that be done, yes, and I believe that the Court, based on evaluations, did not feel that it would be appropriate.

Q. And the Court at that time did not have the evaluation of September 5th, 1990 from Kentucky, did they? A. No, they did not.

Q. And they did not have that because the Iowa Department of Human Services did not deem to include it in the report, is that also correct? A. I believe I indicated that it was erroneously not submitted because I got two reports within two days of each other and I thought it was a duplicate, is the only thing I can come up with.

> I don't really know why it wasn't submitted. (Emphasis added).

If this letter was not given to the court because of negligence rather than an intentional decision by someone in the department to keep it from the court, I find that no less forgivable. The letter clearly paved the way for the child to be returned to her parents and the failure to make this information available to the court resulted in the child unnecessarily languishing in foster care.

Additionally, testimony of Sherry Toelle given at a October 1990 review hearing causes me to have very serious reservations about her credibility with reference to the favorable reports on the parents that were coming from Kentucky. When asked what efforts the Iowa Department of Human Services had made to transfer custody of Linda to a department of human services closer to the mother's residence, Sherry Toelle testified that, "that has not been suggested." Toelle gave this testimony under oath after her receipt of the September 5, 1990 letter from Kentucky's Department of Social Services stating, in part, as follows:

> On the basis of our involvement with the family over the past several months and the progress that they have made in this time, we are approving this family for placement of their child, Linda. If the child is returned to the parents, services will continue to be provided to the family until it is felt by the agency that services are no longer needed.

Also note footnote 3.

I recognize the juvenile court rejected the Kentucky department's recommendations at the termination hearing and concluded that "the State of Kentucky does not have the same standards in these matters as the State of Iowa and whether the standards in the State of Kentucky are adequate to protect the children in the State of Kentucky is not before the Court, nor is it of concern to the Court."

The parents' counsel, in arguing this decision was wrong, in his brief stated:

> Not since the pronouncement of the now discredited decision in Painter v. Bannister, 140 N.W.2d 152 (Iowa 1966), has an Iowa court delivered a more parochially pretentious justification for its disruption of a parent-child relationship then is found in the decision under appeal. For a jurist of this State, with its admitted fiscal problems leading to a reduced ability to provide services through DHS and a track record of foster care placement including the recent Children's Square debacle in Council Bluffs and the physical injury to Linda while in State care; to denigrate the standards of the State of Kentucky and disregard their recommendations should be comical. Unfortunately, it is not, because it means that action in Linda's best interest, her return to her parental home, is further delayed. This child should have been returned to her parents no later than October 30, 1990.

I cannot turn a deaf ear to this argument, nor can I subscribe to a finding Kentucky has lesser standards for child protection than Iowa.

There is absolutely nothing in this record to suggest Kentucky does not have adequate child protection programs. There is no basis to find Kentucky does not protect children within its borders and with the same vigilance as Iowa. A

finding Kentucky may not offer child protection is an insult to the several fine and conscientious Kentucky judges and juvenile workers I have the privilege of knowing.

The Kentucky department's worker testified help was available.[5] We give credence to our sister states. The reports from Kentucky and the deposition of the worker who worked with the family in Kentucky convince me the worker was well qualified, had substantial contact with the family and had a valid basis for her opinions.[6] I recognize the

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5. (Appellants' counsel questioning Michelle Stigall)
Q. My question is if Linda does suffer from trauma, from being burned in the foster home and does suffer from separation anxiety because the State of Iowa has kept her from her natural parents for two years, is help available to this small child within the jurisdiction of Kentucky that would alleviate or ease her coming back into the family home? A. Yes, she could get help in the state of Kentucky.

6. (State's counsel questioning Michelle Stigall)
Q. And I guess I'm referring to one from September 5th of 1990 that I haven't referred to before in Exhibit 47 that says, and I quote in your letter, on the basis of our involvement with the family over the past several months and the progress that they've made in this time we are approving the family for placement of their child Linda. A. And that's what they asked us, if they asked if we had a problem with -- with the child being placed in that family at that time, and I did not.
Q. Okay. And that's even though the parents had not completed the treatment plan? A. As I said earlier, we did not require that they complete everything in the treatment plan to return a child home.
Q. I understand that. My question was that was even though they hadn't completed that? A. Yes.
Q. And even though your law may be different than ours, even though Laura may have gotten psychological or emotional help that you didn't take into consideration, even though they had a past history of very poor compliance, had a past history of moving from state to state, all of that I'm sure you took into consideration when you made that recommendation, did you not? A. As I said, it was based on what I saw and observed here.

worker from Kentucky felt pressure from Iowa to render a contrary opinion.[7] The parents felt this pressure in electing to move to Kentucky so their child would be born in Kentucky, not Iowa.[8]

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7. (Worker from Kentucky questioning)
Q. Would it surprise you to know that the local department never bothered to inform the court that that recommendation had been made by your department? A. No, it would not surprise me.
Q. Is that consistent with the treatment that they appeared to be exhibiting toward Laura and Roger during your course of contact with the Iowa department? A. Yes, sir.
Q. Did you get the impression or have the impression from your contacts in the various letters issued by the Iowa department to your department that the Iowa department was hopelessly prejudiced against Laura and Roger? A. It was my distinct impression that throughout the time that I had contact with Iowa that they were wanting me to say something negative or derogatory about Roger and Laura. They consistently want me to -- to say that they didn't get along or that they were hostile in some way because they had been hostile to them in the past and that just did not happen.

8. Appellants' counsel asked James Barry, an attorney for the State representing the Department of Human Services, the following questions:
Q. Have you been a party to any discussions concerning the removal of the child, [boy born in Kentucky], in the event that he should return to the State of Iowa? A. I think I had a conversation with you regarding that in which I indicated that if he were to return to this jurisdiction, that it was my belief that we would have to do with him what was done with Linda, which was remove that child from the custody of Laura and Roger.
Appellants' counsel asked the following questions of Sherry:
Q. Would it be fair to characterize -- Strike that, please. Let me go at it this way, please, Sherry. Laura has had a long history with the Iowa Department of Human Services, is that right? A. In this particular case, correct.
Q. And it was attempted on the child before that, wasn't it, on (another child of hers)? A. It was attempted for imminent danger and when they secured him, he did have a broken arm, yes.
Q. And you've been complaining about Laura not making contact with Linda, but isn't it a fact that when she left this state on the 16th day of November, 1989, she was pregnant? A. Yes.
Q. And isn't it also a fact that you testified on or

I recognize the responsibility we all bear to assure that children in our state have adequate care. To this end, the legislature has with very good reason given the department of human services considerable discretionary power to intervene in the lives of families and the courts of this State give considerable credence to the department's discretion. Unlike most government agencies, the actions of the Iowa Department of Human Services in many aspects are not subject to public scrutiny because in an effort to protect the families and the children, the department operates under a cloak of confidentiality with many of their decisions subject to review only by the courts. Because of this, any failure to advise the court of all evidence and reports should not easily be forgiven.

I do not believe in this case the social worker just forgot to let the Iowa court know that Kentucky recommended placement and stood ready to supervise the placement. If the department forgot to let the court know that, then,

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about the 30th day of October, 1990, before this Court that your opinion and your recommendation should the child, (boy born in Kentucky), have been returned to the jurisdiction of Iowa would have been to take that child on the 3rd day of April, 1990. A. I cannot remember my testimony at this point. I honestly could not.

Q. Would that have been your recommendation as of April the 3rd, 1990? A. April 3rd, 1990, -- yes, it may well have been.

those persons responsible for the file were not competent to handle it.

There clearly was a determination by the Iowa Department of Human Services to attempt to structure evidence that was favorable to their position.[9] Kentucky's social worker testified that it was her "distinct impression that throughout the time that I had contact with Iowa that they were wanting me to say something negative or derogatory about the parents. They consistently want me to -- to say that they didn't get along or that they were hostile to them in the past and that just did not happen." When asked what efforts the Iowa Department of Human Services had made to transfer custody of Linda to a department of human services closer to the mother's residence, Sherry Toelle testified that, "that has not been suggested." This testimony was rendered after her receipt of the September 5, 1990 letter from Kentucky's Department of Social Services approving

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9. Telephonic Deposition of Michelle Stigall, who works for the Department of Social Services in the State of Kentucky: (Jim Barry questioning)

Q. So what you're telling me is in a nutshell the (biological) parents -- failed to complete the treatment program that you'd recommended? A. As far as the evaluation.

Q. But even though they failed to complete that treatment program that were expressed conditions of the court order here in the State of Iowa it would still be your recommendation as of December 1990 that the child could be returned to their home? A. Based on what I have seen and working with the family and the child that was in the home, yes, it was.

Q. Okay. Did you take into consideration the past failure to comply with services? A. Yes.

placement of Linda with her parents.

The crucial issue in this case and in every case is, have reasonable efforts been made to let the child remain with his or her parent or parents? Reasonable efforts have never been made.[10]

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10. Mr. Jones as guardian ad litem for the child asked Sherry Toelle the following questions:

Q. Has there been any change in circumstances that you're aware of from the time Laura and Roger left the State of Iowa to the present time? A. It's my understanding from Kentucky department's reports that Roger and Laura did complete a parenting class there and that, to my understanding, they are still together and have adequately provided for the two children that were born since their move there.

Q. In your mind, is compliance with the Court Orders and undergoing psychiatric and substance abuse evaluations and -- are they relevant with regards to whether they would be deemed suitable for Linda to be released to their custody? A. I believe initially when we provided that information to the Court and the Court made its original dispositional order, that those were in fact the needs of the parents at that time, to be evaluated to determine what further treatment was necessary. Since that time, at least within the Kentucky guidelines, they have shown a certain amount of stability there.

Q. During the last six months have they -- have Roger and Laura made any reasonable efforts to resume the care of Linda or participate in their care or visit with them?

The court overruled the mother's counsel's objection to this question and the Sherry answered as follows: A. The parents have not had any contact with Linda. They have not maintained any significant contact, which by virtue of Linda's previous evaluations for her attachment disorder, I feel would be necessary before they could be reunited with her.

The State's attorney asked Sherry the following questions:

Q. Have you continually requested of the parents through whatever contact you've had as well as with the Department of Social Services in Kentucky that the psychological, domestic abuse and chemical abuse evaluations be completed and returned to this particular Court? A. Yes, I have. There apparently was some possibility that the reports or the evaluations could not be done due to an evaluator not wishing to be subpoenaed. I offered to Miss Stigall the possibility of other evaluators doing that and I'm not sure what the outcome of that ever was.