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From the SelectedWorks of Evelyn K. Calogero

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Reasonable Efforts to Reunite Families in Child Abuse and Neglect Proceedings: They Aren’t Just For Funding Anymore In re Rood, 763 N.W.2d 587 (Mich. 2009)

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I. Introduction

Since 1983, states have been eligible to receive federal funding for children in foster care. One of the requirements for this funding (commonly referred to as Title IV-E funding) is that the state have a federal-government-approved plan in place that provides, among other things, that the state make reasonable efforts to prevent a child’s removal from home, and if removed, facilitates a child’s return home, unless certain aggravated circumstances exist.

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(A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and

(B) to make it possible for the child to return to his home . . . .”

3 42 U.S.C. § 671(a)(15) (2006). The current statute provides as follows:
(15) provides that—

(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families—

(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

(ii) to make it possible for a child to safely return to the child's home;

(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan (including, if appropriate, through an interstate placement) and to complete whatever steps are necessary to finalize the permanent placement of the child;

(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that—

(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) the parent has—

(I) committed murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United
In 1992, the United States Supreme Court held in *Suter v Artist M,*\(^4\) that a parent could not bring a separate civil rights claim against a state for not making reasonable efforts to reunify parent and child.\(^5\) According to the Court,

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States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

(iii) the parental rights of the parent to a sibling have been terminated involuntarily;

(E) if reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D)—

(i) a permanency hearing (as described in section 475(5)(C), which considers in-State and out-of-State permanent placement options for the child, shall be held for the child within 30 days after the determination; and

(ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and

(F) reasonable efforts to place a child for adoption or with a legal guardian, including identifying appropriate in-State and out-of-State placements may be made concurrently with reasonable efforts of the type described in subparagraph (B): . . . .


\(^5\) *Id.* at 350.
Title IV-E made states eligible for federal monies; it did not grant parents or children rights independent of the funding provisions.\(^6\)

Title IV-E still does not create independent rights to enforce its reasonable efforts provisions. But parents in Michigan who claim that the State did not make reasonable efforts to reunite them with their children now know what the State Department of Human Services (the State) must do to make reasonable efforts when the parent claims as a defense in a termination of parental rights proceeding that the State did not make reasonable efforts to reunite their families.\(^7\)

The Michigan Supreme Court has answered a question many parents have asked since 1983: When are the State’s efforts to reunite them with their children reasonable? The answer? The State’s efforts to reunify child and family are reasonable if the State fulfills its duties under federal statutes and regulations, state statutes and court rules, and the State’s own internal child protective and foster care procedures.\(^8\) If it does not, a parent may challenge

\(^6\) *Id.*

\(^7\) *In re Rood*, 763 N.W.2d 587 (Mich. 2009).

\(^8\) *Id.* at 598 (per Corrigan, J., Kelly, J., and Markman, J.), 615 (per Cavanagh, J. concurring in part). Justice Maura D. Corrigan wrote the lead opinion, with Chief Justice Marilyn J. Kelly and Justice Stephen J. Markman concurring. Justice Michael F. Cavanagh wrote an opinion concurring in part with the lead opinion. Justice Robert P. Young, Jr. wrote an opinion concurring in part with the lead opinion. Justice Elizabeth A. Weaver concurred only in the lead opinion’s result, and concurred in part with Justice Young.
its failure to follow these procedures when the State seeks to terminate the
parent’s rights to his or her child.\textsuperscript{9}

In answering the question the way it did, the Michigan Supreme Court
has now provided much-needed guidance to the State, the bench, and the bar.
And it has put the State on notice: in the future, parents, attorneys, and
judges will be examining its efforts to reunify parent and child through a more
powerful lens.

This article examines the Michigan courts’ limited attempts to define and
describe the scope of the State’s reasonable efforts. It next explains why that
scope leaves uncertainty because it conflicts with state statutes and court
rules. It then explains how the court in \textit{In re Rood} has put the State’s efforts to
reunify parent and child under a more powerful microscope. It also discusses
some inconsistencies in the opinion. It finishes with advice to judges, parents’
advocates, and children’s advocates about what they must now do to ensure
that parental rights to a child are not terminated unnecessarily.

In the end, the court’s decision in \textit{Rood} will work to the advantage of
parents and children. The State knows what the courts will expect it to do.
Parents will be able to receive meaningful services in their efforts to ameliorate
the conditions that led to State intervention with the family. And Michigan’s

\textsuperscript{9} \textit{Id.} at 606, 615 n.2 (Cavanagh, J. concurring in part).
children will ultimately benefit when they are reunited with their parents in a changed, safer environment.

II. The Question: When and How Did Michigan’s Child Welfare Workers Satisfy The Statutory Mandate To Make Reasonable Efforts to Reunify Families?

A. Federal Statutes – The Evolution of Reasonable Efforts

The federal Child Abuse Prevention And Treatment Act of 1974,\(^\text{10}\) required states to create and implement child abuse investigation and reporting procedures.\(^\text{11}\) As an unexpected result, the number of children entering foster care rapidly increased.\(^\text{12}\) Once the number of children being removed from their homes increased, Congress became concerned that these children may not need to have been removed and were spending too much time in foster care.\(^\text{13}\) In addition, Congress became concerned that states were not working hard enough to return those children to their families or were not working hard enough to find permanent, adoptive homes for the children who could not

\(^{10}\) Pub. L. 93-247.


\(^{12}\) Id.

\(^{13}\) Id.
return to their families.\textsuperscript{14} The congressional solution? The Adoption Assistance and Child Welfare Act of 1980 [AACWA].\textsuperscript{15}

AACWA conditioned federal funding to states by “[r]equir[ing] states to make ‘reasonable efforts’ to keep families together, by providing both [removal] prevention and family reunification services.”\textsuperscript{16} And for a while, it worked; the number of children in foster care decreased.\textsuperscript{17}

But by 1995, the number of children in foster care nationally had increased 76% over what it had been in 1986.\textsuperscript{18} Congress enacted several funding provisions in the early 1990s to improve child welfare services.\textsuperscript{19} These acts funded, among other things, services to help families whose children were at risk of being removed, independent living for older children in foster care, court improvement programs, and waivers of federal law to allow states to experiment to find the best child welfare systems for them.\textsuperscript{20}

\textsuperscript{14} Id.

\textsuperscript{15} Id. (citing PUB. L. 96-272).

\textsuperscript{16} Id. at 4.

\textsuperscript{17} Id.

\textsuperscript{18} Id.

\textsuperscript{19} See id. at 4-5.

\textsuperscript{20} Id. (citing Independent Living Program, PUB. L. 99-272; Family Preservation and Family Support Services Program, PUB. L. 103-66; child welfare waiver program (as part of the Social Security Amendments of 1994, PUB. L. 103-432);
By the mid-1990s, Congress started hearing rumblings of discontent: AACWA did not emphasize strongly enough keeping children safe; AACWA promoted returning children to their families, even, it seemed, when it was not safe to do so; state child welfare organizations were not looking seriously enough at adoption as a viable permanency option.\textsuperscript{21} Congress responded with the Adoption and Safe Families Act of 1997 [ASFA].\textsuperscript{22}

ASFA discourages sending children back into unsafe environments by “making the child’s health and safety . . . the paramount concern” when determining what efforts will be made “with respect to a child” and in making those efforts.\textsuperscript{23} In addition, Congress recognized situations in which a state need make no effort at all to prevent removal or to reunify families.\textsuperscript{24}

\begin{align*}
The \text{Multi-Ethnic Placement Act, } \text{Pub. L. 103-382; and the Inter-Ethnic Placement Provisions, Pub. L. 104-188).}
\end{align*}

\textsuperscript{21} \textit{Id.} at 5.

\textsuperscript{22} \textit{Id.} (citing Pub. L. 105-89).


\textsuperscript{24} U.S.C. § 671(a)(15)(D) (2006). These situations include where

(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) the parent has--

(I) committed murder (which would have been an offense under section 1111(a) of Title 18, if the offense had occurred in the
Under both the Adoption Assistance and Child Welfare Act of 1980, and the Adoption and Safe Families Act of 1997, to receive federal funding for foster care and adoption, Michigan needed a plan that included, among other things, a “reasonable-efforts-to-prevent-removal-or-to-reunite-families” provision. Michigan responded with both statutes and court rules that mirror the federal statutes and regulations.

B. **Michigan’s Reasonable Efforts Statutes and Court Rules**

Michigan statutes and court rules prescribe four different reasonable efforts determinations: reasonable efforts to prevent removal of a child from his or her home, reasonable efforts to rectify the conditions that lead to removal of a child (special maritime or territorial jurisdiction of the United States) of another child of the parent;

(II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of Title 18, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

(iii) the parental rights of the parent to a sibling have been terminated involuntarily . . . .


26 Pub. L. 105-89.

the child, reasonable efforts to reunify the child with his or her family, and reasonable efforts to finalize a permanency plan. Each form applies at different stages of a child protection proceeding.

As a threshold matter, “reasonable efforts to reunify the child and family must be made in all cases” with certain exceptions. Then, beginning with a


Reasonable efforts to reunify the child and family must be made in all cases except if any of the following apply:

(a) There is a judicial determination that the parent has subjected the child to aggravated circumstances as provided in section 18(1) and (2) of the child protection law, 1975 PA 238, MCL 722.638.

(b) The parent has been convicted of 1 or more of the following:

(i) Murder of another child of the parent.

(ii) Voluntary manslaughter of another child of the parent.

(iii) Aiding or abetting in the murder of another child of the parent or voluntary manslaughter of another child of the parent, the attempted murder of the child or another child of the parent, or the conspiracy or solicitation to commit the murder of the child or another child of the parent.

(iv) A felony assault that results in serious bodily injury to the child or another child of the parent.

(c) The parent has had rights to the child’s siblings involuntarily terminated.
removal order and ending with concurrent planning, the court must apply a variation of the reasonable efforts language.

- When the court orders a child to be taken into custody because the child is not safe in his or her home, the court must determine that “reasonable efforts to prevent the removal of the child have been made or are not required.”  

- At the preliminary hearing, the court must again determine “whether reasonable efforts to prevent the removal of the child have been made or that reasonable efforts to prevent removal are not required.”

- As part of the evidence that the State provides to the court during a dispositional hearing, the State must “report in writing what efforts were made to prevent removal, or to rectify conditions that caused removal, of the child from the home.”

- Each case service plan must also describe the efforts the State has made to date to prevent the child’s removal from his or her home or the efforts made to rectify the conditions that caused the child’s removal from his or her home.


33 Mich. Comp. Laws Ann. § 712A.18f(1) (West 2002). In addition, the report shall include all of the following:

(a) If services were provided to the child and his or her parent, guardian, or custodian, the services, including in-home services, that were provided.

(b) If services were not provided to the child and his or her parent, guardian, or custodian, the reasons why services were not provided.
• And in formulating its disposition order, the court must, “when appropriate, include a statement in the order of disposition as to whether reasonable efforts were made: (a) to prevent the child’s removal from home, or (b) to rectify the conditions that caused the child to be removed from the child’s home.”

• At all dispositional review hearings, if the child remains in foster care, the court must assess “the extent of the progress made toward alleviating or mitigating conditions that caused the child to be, and to remain, in foster care.”

• During the permanency planning stage, the court “must determine whether the agency has made reasonable efforts to finalize the permanency plan.”

• The State may, concurrently, seek reunification of child and family and explore adoption or other permanency planning options.

(c) Likely harm to the child if the child were to be separated from his or her parent, guardian, or custodian.

(d) Likely harm to the child if the child were to be returned to his or her parent, guardian, or custodian.

34 MICH. CT. R. 3.973(F)(3). The court rule prescribing disposition orders differs from the Michigan statute prescribing disposition orders. The court rule provides that the court must make the reasonable efforts statement “when appropriate.”

The statute, however, states that the court must make the reasonable efforts statement, without the “when appropriate” language. The statute provides that the court “shall state whether reasonable efforts have been made to prevent the child’s removal from his or her home or to rectify the conditions that caused the child’s removal from his or her home.” MICH. COMP. LAWS ANN. § 712A.18f(4) (WEST 2002).

35 MICH. CT. R. 3.975(F)(2).

36 MICH. CT. R. 3.976(A).

37 MICH. COMP. LAWS ANN. § 712A.19(12) and (13) (WEST SUPP. 2009). The statute provides:
While each formulation arguably applies at different stages of the child protective proceeding, Michigan’s courts have not held litigants to stagesspecific formulations. Rather, at the termination of parental rights stage, litigants have argued a general “reasonable efforts-to-reunify-the-child-withthe-family” standard, which includes the various formulations. And no Michigan court had ever specifically defined the term “reasonable efforts.”

C. Michigan Courts’ Interpretation of the Reasonable Efforts Requirements

Respondent parents have argued, some successfully, but most not, that the State cannot terminate their rights to their children if the State has not made reasonable efforts to reunite them with their children. Despite its many uses in the Juvenile Code, the Probate Code, and the Michigan Court Rules, neither the legislature nor the Michigan Supreme Court had defined the term “reasonable efforts” in the statutes or court rules. And, as noted, neither the

(12) Reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child with the family.

(13) Reasonable efforts to place a child for adoption or with a legal guardian, including identifying appropriate in-state or out-of-state options, may be made concurrently with reasonable efforts to reunify the child and family.

38 “[R]espondent” means the parent, guardian, legal custodian, or nonparent adult who is alleged to have committed an offense against a child. Mich. Ct. R. 3.903(C)(10). The court rules do define respondent in the context of child protective proceedings before they define it again in the context of termination of parental rights. See Rood, 763 N.W.2d at 599, n.21.
Michigan Court of Appeals nor the Michigan Supreme Court had defined the term in case law.

The Michigan Court of Appeals did, however, interpret the phrase in *In re Fried.* The court stated that the State “is required to make reasonable efforts to rectify the conditions that caused the child’s removal by *adopting a service plan.*” And when a parent raised the reasonable efforts argument, the court of appeals treated it as an argument attacking the sufficiency of the evidence used to prove one of the statutory grounds for termination of parental rights.

Rather than just looking to see if the State has adopted a service plan, though, the court of appeals does look at the efforts the State has made to provide the parent with services as described in the plan. In *Fried,* the child had been removed from her home because of her parents’ drug abuse. The State referred the father to mental health and substance abuse services. It


40 Id. (citing Mich. Comp. L. Ann. § 712A.18f(1), (2), and (4) (West 2002)) (emphasis added).

41 Id. (“Although respondent has not expressly challenged the sufficiency of the evidence for termination of his parental rights, his contention that reasonable services were not offered ultimately relates to the issue of sufficiency. See In re Newman, 189 Mich. App. 61, 65-67, 472 N.W.2d 38 (1991”).

42 Fried, 702 N.W.2d at 197.

43 Id. at 195.

44 Id. at 197.
arranged to have the father tested for substance abuse. It arranged for supervised parenting time with his child. The father did not accomplish what he needed to accomplish to regain custody of his daughter.

The court of appeals, then, looked beyond merely adopting a service plan to see what the state had offered to the father and how the father had complied with the plan. The court held that the “trial court did not clearly err by finding that reasonable efforts were made to preserve and reunify the family.”

Arguably, then, the court of appeals did and does more than just look at whether the State has adopted a case service plan. And other panels of the court of appeals have done the same. But the opinion can also be read quite narrowly to allow a court to look to see if the State adopted a service plan and, without more, say that the State made “reasonable efforts.”

And if a court were to read the opinion narrowly, practitioners and judges are left with uncertainty. Could that really be all that the State is required to do? Adopt a service plan? Isn’t it also required to provide the

45 Id.
46 Id.
47 Id.
48 Id.

services it said it would provide under the plan? The statutes and court rules require the State to perform certain acts. How did they come into play? Or did they come into play at all?

III. The Problem: The Court of Appeals’ Interpretation Did Not Require the State to Do Enough.

The uncertainty all are left with if the “adopting-a-service-plan” interpretation is itself narrowly interpreted exists for four reasons. First, the authority that the Michigan Court of Appeals cited to support its interpretation that adopting a service plan satisfies the reasonable efforts requirements does not support its interpretation.\(^{50}\) Second, the court’s interpretation not only conflicts with statutes and court rules that require the trial courts to look at the progress everyone has made toward reunification during review hearings,\(^{51}\) but it also conflicts with the statutory mandate that “[r]easonable efforts to reunify the child and family must be made in all cases . . . .”\(^{52}\) Third, because the statute itself does not contain a definition of reasonable efforts, the court should have applied the rules of statutory construction to define the term. Fourth, the court’s interpretation is now out-of-date because the Michigan Legislature has recently recognized that the State’s efforts toward reunification

\(^{50}\) The court in Fried cited Mich. Comp. L. Ann. § 712A.18f(1), (2), and (4) (West 2002).


may not have been reasonable and has enacted a statute that would prevent the termination of parental rights until reasonable efforts have been made. Each of these reasons is examined below.

A. Mich. Comp. Laws Ann. § 712A.18f(1), (2), and (4), do not support the Fried court’s interpretation.

As noted, the court in Fried cited Mich. Comp. Laws Ann. § 712A.18f(1), (2), and (4) (West 2002), to support its conclusion that adopting a service plan satisfies the reasonable efforts requirements in Michigan’s statutes and court rules. That statute, however, prescribes the information that the State must put into its service plan. It does not state that adopting a service plan satisfies the reasonable efforts requirements. And reading the statute as if it does, ignores the statute’s language and renders sub-section three of the statute meaningless. The court’s opinion can be read to say, in effect, that it is enough for the State to adopt a plan; the courts will not look at what was in the plan to see if the suggested services were appropriate for the family, and they will not look at how the State implemented the plan.

A short detour here is appropriate to explain the various hearings in a child protective proceeding so that the statute can be considered in context. If, after an investigation, a child is taken into State custody, the court must


hold a preliminary hearing to determine if there is probable cause to believe that the child comes within the court’s jurisdiction.\textsuperscript{55} At the preliminary hearing, the court decides whether to keep the child in placement or to return the child to his or her parent or parents.\textsuperscript{56} The child will remain in placement if the court determines that staying in his or her home would be contrary to his or her welfare.\textsuperscript{57} And the court must determine if the State made reasonable efforts to prevent the child’s removal or if reasonable efforts to prevent the child’s removal were not necessary.\textsuperscript{58}

Once the State has filed a petition alleging that the child is within the court’s jurisdiction because the child has been abused or neglected, the court must either take the parent’s plea to the petition or hold a trial on the allegations in the petition.\textsuperscript{59} Once the court has determined that it has jurisdiction of the child, the court must then determine how best to protect the child while attempting to reunify the child with his or her family.\textsuperscript{60} This occurs


\textsuperscript{58} Mich. Ct. R. 3.965(D)(1).


at the dispositional hearing, and this is where the statute that the court in
Fried cited to justify its “reasonable efforts” interpretation applies.

The statute, Mich. Comp. Laws Ann. § 712A.18f, provides first that if the
State at disposition recommends that the child remain in placement rather
than return home, the State must justify its recommendation. That written
justification must specifically describe the efforts the State made to keep the
child in the home by describing the services it provided; if services weren’t
provided to keep the child in the home, the State must explain why. That
report must also detail the harm a child might suffer from both being separated
from and being returned to his or her parents.

The statute next requires the State to create a case service plan. And
in sub-section three, the section that the court of appeals’ “reasonable efforts”
interpretation rendered meaningless in its “reasonable efforts” analysis, the
statute provides what that case service plan must contain:

(b) Efforts to be made by the child’s parent to enable the child to
return to his or her home.

(c) Efforts to be made by the agency to return the child to his or her
home.

____________________

(d) Schedule of services to be provided to the parent, child, and if
the child is to be placed in foster care, the foster parent, to
facilitate the child's return to his or her home or to facilitate the
child's permanent placement.\textsuperscript{65}

The statute's sub-section four provides that the court must consider the case
service plan, among other things, "before it enters an order of disposition."\textsuperscript{66}

So Mich. Comp. Laws Ann. § 712A.18f does not support the court's
statement in\textit{ Fried} that all the State must do to make its reasonable efforts to
rectify the conditions that caused the child to be removed from his or her home
is to adopt a service plan. The statute states only that before a court may
order further measures to protect the child and help reunite the family, the
court must look at the plan the State and the family have drawn up, which
contains the services that\textit{ the State} plans to provide to the family, and make its
orders accordingly. "The court may order compliance with all or any part of the
case service plan as the court considers necessary."\textsuperscript{67}

\textit{B. The statutes and court rules that require the trial courts to look at
the progress all parties have made toward reunification during
review hearings require the State to do more than adopt a service
plan.}

Once the court issues its orders during that initial dispositional hearing,
the court must hold dispositional review hearings during the pendency of the


family's involvement with the State. The State must update its case service plan every 90 days. If the child is still in foster care, that first dispositional review hearing must occur within six months of the date on which the child was first removed from his or her home.

During a dispositional review hearing, the court must look at the progress everyone has made in complying with the order of disposition and with the case service plan. And this is where the court's statement in Fried, that the State makes reasonable efforts to rectify the conditions that existed when the child was removed from her home when it adopts a service plan, conflicts with the court rules and with Michigan statutes.

When reviewing the progress the parties have made in complying with the case service plan, the court must consider (among other things) the following:

(a) the services provided or offered to the child and parent, guardian, or legal custodian of the child;

(b) whether the parent, guardian, or legal custodian has benefited from the services provided or offered;

. . . .

______________________________


(d) the extent to which the parent, guardian, or legal custodian complied with each provision of the case service plan, prior court orders, and any agreement between the parent, guardian, or legal custodian and the agency . . . .\textsuperscript{72}

Once the court has engaged in this review, it may “modify any part of the case service plan.”\textsuperscript{73}

Because the court must review the services that the State has provided or offered, and because the court may modify the case service plan, the court, at this point, should be evaluating whether the services the State has been offering or providing are appropriate to the families’ needs. Thus, merely adopting a case service plan is not enough to satisfy the requirement that the State make “reasonable efforts to rectify the conditions that caused the child’s removal from his or her home.”\textsuperscript{74} The State must actually provide or offer services to the child and family.

Moreover, Mich. Comp. Laws Ann. § 712A.19a(2) (West Supp. 2009) requires more than just reasonable efforts to rectify the conditions that caused the child to be removed from her home. That statute requires the State to make [r]easonable efforts to reunify the child and family . . . in all cases . . . .\textsuperscript{75}

\textsuperscript{72} Mich. Ct. R. 3.975(F)(1).

\textsuperscript{73} Mich. Ct. R. 3.975(G).

\textsuperscript{74} Mich. Comp. Laws Ann. §712A.18f(1) and (4) (West 2002).

\textsuperscript{75} The statute contains exceptions to the “all cases” requirement for aggravated cases. \textit{See supra} n. 29.
Certainly, the case service plan will address those conditions that led to the child’s removal from home. But, as the statutes and court rules contemplate, other issues may arise during the course of the case that were not related to the child’s initial removal. In fact, one of the grounds for terminating a parent’s rights to his or her child contemplates just that. The statute provides that if during the course of the case (1) other conditions came to light that would have brought the child within the court’s jurisdiction; (2) the parent was given recommendations on how to rectify those conditions; and (3) the parent did not rectify them after having been given a reasonable opportunity to do so, a court may terminate that parent’s rights to his or her child.

The court rules also contemplate situations where a parent’s rights may be terminated based on conditions that were not mentioned in the original petition. Under those circumstances, the court may use only legally admissible evidence to determine if the allegations relating to the new circumstances are true and satisfy one of the statutory grounds for termination of parental rights.


As noted earlier, the court of appeals’ statement in *In re Fried*, that the State “is required to make reasonable efforts to rectify the conditions that caused the child’s removal by adopting a service plan[,]”\(^{80}\) conflicts with Michigan’s statutes and court rules. The State must make reasonable efforts to reunify the family in all cases. To reunify the family, the State must create a service plan that seeks to correct the conditions that caused the child to be removed from his or her home. The State must update that service plan every 90 days. The court must review the service plan and the parties’ progress toward compliance with it at dispositional review hearings. If the services offered or to be offered are not appropriate to facilitate reunification, the court may modify the service plan. If new conditions come to light that require action, the State may recommend to the parent ways to rectify the new conditions. If the new conditions are not rectified within a reasonable time, the State may seek to terminate parental rights based on those new conditions.

The State is not merely trying to rectify the conditions that caused the child’s removal, the State is charged with reunifying the family if it is safe to do so. Merely adopting a service plan does not fulfill the statutory mandate. The State must do more. It must work with the family to help it to achieve its goals. The court of appeals’ interpretation does not require the State to actively work with the family and thus conflicts with the statutes and court rules.


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C. Reasonable Efforts Defined – The Rules Of Statutory Construction

Rather than simply saying that the State’s statutory mandate to reunify families is fulfilled when it adopts a service plan, the court should have defined the term “reasonable efforts” and then applied the definition to determine if the State’s efforts to reunify the family were, in fact, reasonable. Michigan courts routinely apply rules of statutory construction to determine the meaning of phrases in a statute or court rule.\footnote{81} In addition to using the rules of statutory construction, “[w]hen the Legislature does not provide definitions, courts may consult a dictionary.”\footnote{82}

For example,

When faced with questions of statutory interpretation, our obligation is to discern and give effect to the Legislature's intent as expressed in the words of the statute. \textit{DiBenedetto v. West Shore Hosp.}, 461 Mich. 394, 402, 605 N.W.2d 300 (2000); \textit{Massey v. Mandell}, 462 Mich. 375, 379-380, 614 N.W.2d 70 (2000). We give the words of a statute their plain and ordinary meaning, looking outside the statute to ascertain the Legislature’s intent only if the statutory language is ambiguous. \textit{Turner v. Auto Club Ins. Ass’n}, 448 Mich. 22, 27, 528 N.W.2d 681 (1995). Where the language is unambiguous, “we presume that the Legislature intended the meaning clearly expressed-no further judicial construction is required or permitted, and the statute must be enforced as written.” \textit{DiBenedetto, supra} at 402, 605 N.W.2d 300. Similarly, courts may not speculate about an unstated purpose where the

\footnote{81 See e.g., \textit{In re L.E.}, 747 N.W.2d 883, 895-96 (Mich. Ct. App. 2008).}

unambiguous text plainly reflects the intent of the Legislature. See
(1959).83

Had the court of appeals consulted a dictionary, it would have seen that
“reasonable efforts” does not mean adopting a service plan. Rather,
“reasonable” means “1. agreeable to reason or sound judgment; logical . . . . 2.
not exceeding the limit prescribed by reason; not excessive. . . .”84 “Effort”
means “1. exertion of physical or mental power . . . . 2. an earnest or
strenuous attempt . . . . 3. something done by exertion or hard work . . . . 5.
the amount of exertion expended for a specified purpose . . . .”85

Thus, “reasonable efforts to prevent the removal of a child”86 would mean
a sound, logical, strenuous, or earnest attempt to keep the child at home with
his or her parents. And “reasonable efforts to rectify conditions that caused
removal of the child from the home”87 would mean a sound, logical, strenuous,
or earnest attempt to help the parent or parents change their behavior or

84 RANDOM HOUSE UNABRIDGED DICTIONARY (1997), available at Infoplease.com,
visited Apr. 28, 2009).
86 MICH. COMP. LAWS ANN. § 712A.18f(1),(4) (WEST 2002); MICH. CT. R.
3.963(B)(1); MICH. CT. R. 3.965(D)(1); MICH Ct. R. 3.973(E), (F)(3)(a).
87 MICH. COMP. LAWS ANN. § 712A.18f(1), (4) (WEST 2002); MICH. CT. R. 3.973(E),
(F)(3)(b).
change the environment that existed when the child was removed from the home. Finally, “reasonable efforts to reunify the child and family” would mean a sound, logical, strenuous, or earnest attempt to work with the parent or parents to bring them back together with their children.

D. The Court of Appeals’ Interpretation Of “Reasonable Efforts” Has Been Superceded By Statute: The Michigan Legislature Has Recognized That The State’s Efforts May Not Have Been Reasonable In All Cases.

In 2008, the Michigan Legislature amended the probate code. A court must no longer order the State to file a petition to terminate a parent’s rights to his or her child if the child has been in foster care for 15 of the last 22 months. Rather, the legislature carved out an exception to that rule. The court need not order the State to file a termination petition if “[t]he state has not provided the child’s family, consistent with the time period in the case service plan, with the services the state considers necessary for the child’s safe return to his or her home, if reasonable efforts are required.”

The court’s formulation – reasonable efforts means adopting a service plan – plainly conflicts with this statute. The amended statute contemplates


more than just creating a service plan; it requires State action to fulfill the plan’s provisions. The Michigan Legislature has taken a giant step toward holding the State responsible for its efforts to reunite families. In the cases where the new statute applies, then, the Fried formulation cannot withstand judicial scrutiny.

While the Michigan courts still have not specifically defined the term “reasonable efforts,” the various court of appeals’ panel have been doing more than just determining if the State has developed a service plan. The courts have looked at the services offered in the plan. The problem remained, however; advocates and judges did not have the kind of guidance that a definition of reasonable efforts would bring. Now the Michigan Supreme Court has taken a giant step toward holding the State responsible for its efforts to reunite families in its recent opinion in In re Rood.92 The court in Rood has answered the lingering doubts about “reasonable efforts.”

IV. Reasonable Efforts: The State Must Comply With Statutes, Regulations, Court Rules, and Its Own Procedures.

Until the court’s decision in In re Rood, a parent challenging the termination of his or her parental rights because the State did not make reasonable efforts to reunify the family faced uncertainty about the reasonable efforts requirements. Did the State need to do more than just adopt a service

92 In re Rood, 763 N.W.2d 587 (Mich. 2009).
plan to make reasonable efforts? Was the reasonable efforts requirement merely a predicate to federal funding of a state’s foster care costs?93

The Michigan Supreme Court has removed any lingering uncertainty: A parent may “claim procedural error in an action brought by the state to terminate [his or her parental rights] if the state fails to comply with the required procedures and its failure may be said to have affected the outcome of the case.”94 According to the court, the procedures required to make “reasonable efforts” include those found in federal statutes and regulations, state statutes and court rules, and the State’s own internal procedures.95 So if the State has not followed these procedures, it has not made reasonable efforts to reunify the family, and a parent may raise that failure – the procedural error – as a defense to termination of his or her parental rights, as long as the failure affected the outcome of the case.96

A. Rood: The Facts

93 That counter-argument isn’t exactly accurate. While the United States Supreme Court in Suter v Artist M, 503 U.S. 347, 350 (1992), held that a parent could not bring a later, separate civil rights claim against a state for not making reasonable efforts to reunify parent and child, the Court said nothing about a challenge to the state’s efforts brought in the termination proceedings themselves. Justice Young made this argument in his separate concurring opinion. Rood, 763 N.W.2d at 617 (Young, J. concurring in part).

94 Rood, 763 N.W.2d at 606, 615 n.2 (Cavanagh, J., concurring in part).

95 Id. at 598, 615 (Cavanagh, J., concurring in part).

96 See id. at 606, 616 n.2 (Cavanagh, J., concurring in part).
The respondent in Rood, the child’s father\(^{97}\) Darroll Donald Rood, challenged the State’s efforts to reunite him with his daughter claiming that the State had not done enough before it filed a petition to terminate his rights.\(^{98}\) The child, A., had been removed from her mother’s care due to neglect.\(^{99}\) Even though the state knew that Rood was her father,\(^{100}\) and even though the State protective services worker, foster care worker, and the court had a correct address and telephone number for him,\(^{101}\) the court sent notices of hearings to an outdated address,\(^{102}\) and the foster care worker tried to call him – only once – at an outdated telephone number.\(^{103}\)

\(^{97}\) The child’s mother, Laurie Kops, voluntarily relinquished her rights to her child after she failed to comply with or benefit from the case service plan. *Id.* at 594. Her release of her rights to her child was “‘contingent upon’ the termination of [Mr. Rood’s] rights.” *Id* at n. 11.


\(^{99}\) Rood, 763 N.W.2d at 590.

\(^{100}\) *Id.* at 590.

\(^{101}\) *Id.* at 591.

\(^{102}\) *Id.*

\(^{103}\) *Id.* at 606-607.
Rood himself made the initial contact with the State’s protective services worker.\textsuperscript{104} She never told Rood that he could be considered as a placement for his daughter.\textsuperscript{105} In fact, she told him that the State would seek to reunite A. “back with her mother, not the father.”\textsuperscript{106} She never told him that services were available, if he needed them, to help him reunify with his daughter.\textsuperscript{107} Most importantly, neither the State nor the court told Rood that his parental rights could be at stake in a case against A.’s mother.\textsuperscript{108}

While three of the court’s justices would have held that the State’s failures violated Rood’s procedural due process rights,\textsuperscript{109} five of the six justices who participated in the decision agreed that the state statutes obligated the State to do more than it did.\textsuperscript{110} And four justices agreed that child welfare proceedings in Michigan must comply with federal statutes and regulations,

\textsuperscript{104} \textit{Id.} at 590.

\textsuperscript{105} \textit{Id.} at 591.

\textsuperscript{106} \textit{Id.} at 590.

\textsuperscript{107} \textit{Id.} at 591.

\textsuperscript{108} \textit{Id.} at 609.

\textsuperscript{109} \textit{Id.} at 589, 607-08.

\textsuperscript{110} \textit{Id.} at 598-600, 601-03 (per Corrigan, J., with two other justices concurring), 614, 615 (Cavanagh, J., concurring in part), 616 (Young, J., concurring in part) (“As a result of the lack of adequate notice, respondent was clearly deprived of \textit{numerous statutorily required services} to ensure that he could properly parent his child.” (emphasis added)). Justice Weaver concurred in only the result. \textit{Id.} at 615 (Weaver, J., concurring in part.)
state statutes and court rules, and the state’s own processes set out in its foster care manual.\textsuperscript{111} As Justice Michael Cavanagh stated in his concurring opinion, “Reasonable efforts require that the DHS and the trial court, at a minimum, make the active efforts towards reunification provided for in statutes and court rules . . . .”\textsuperscript{112}

\textbf{B. The Required Procedures – State Statutes and Court Rules.}

Which state statutes and court rules must the State comply with before a court may say that the State made “reasonable efforts” with a noncustodial parent or any parent? The court specifically mentioned the following:

- “Reasonable efforts to reunify the child and family must be made in all cases.”\textsuperscript{113}

- When a child is removed from a parent’s home, both parents are entitled to notice of proceedings.\textsuperscript{114}

- A parent who is not named as a respondent must be notified of and allowed to participate in all proceedings.\textsuperscript{115}

\textsuperscript{111} \textit{Id.} at 606, 614, 615 (Cavanagh, J., concurring in part) (“I also agree that, in Michigan, the statutes, the court rules, DHS policy, and federal laws all set forth procedures that help ensure adequate due process protection for parents.

\textsuperscript{112} \textit{Id.} at 614 (Cavanagh, J. concurring in part).

\textsuperscript{113} \textit{Id.} at 602 (citing Mich. Comp. Laws Ann. § 712A.19a(2) (West Supp. 2009)).


• At the preliminary hearing, the court must determine if the child’s parents have been notified and can adjourn the hearing until both parents can be present.\textsuperscript{116}

• The court must ask the parent from whom the child was taken for the identity and location of relatives to see if one is a fit and appropriate alternative to foster care.\textsuperscript{117}

• DHS must provide an initial service plan before the court may enter an order of disposition.\textsuperscript{118}

• The initial service plan must report the efforts the State made or services the State provided to prevent the child’s removal from home, or it must detail the services the State provided to rectify conditions that caused the child’s removal.\textsuperscript{119}

• The initial service plan must also detail efforts \textit{to be made} and services \textit{to be provided} to facilitate the child’s return home or to facilitate some other permanent placement, and the plan must provide a parenting time schedule.\textsuperscript{120}

• The State must update the service plan every 90 days.\textsuperscript{121}

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\footnotesize
\textsuperscript{116} \textit{Id.} (citing Mich. Ct. R. 3.965(B)(1)).


\textsuperscript{120} \textit{Id.} (citing Mich. Comp. Laws Ann. § 712A.18f(3) and (4) (West 2002)) (emphasis added).

\textsuperscript{121} \textit{Id.} at 601 (citing Mich. Comp. Laws Ann. § 712A.18f(5) (West 2002)).
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• The court must hold a review hearing within 182 days after child was first removed from home, then every 91 days during the first year of placement.122

• At the review hearing the Court must review a parent’s compliance with the plan and progress made toward reunification.123

• The court can order the State to provide and the parent to participate in additional services necessary to rectify the conditions that brought the child into placement.124

• If the child is still in foster care after one year, the court must hold a permanency planning hearing.125

• At the permanency planning hearing, the court must review the progress the parties have made toward returning child home, or the State must show why the child should not be returned home.126

• If at the permanency planning hearing the court determines that the child would be safe at home, it must order child to be returned to the parent.127

• If parent hasn’t substantially complied with the case service plan, the court may use that as evidence that it is not safe to send child home.128


123 Id. at 601 (citing Mich. Comp. Laws Ann. § 712A.19(6) and (7) (West Supp. 2009)).

124 Id. at 602 (citing Mich. Comp. Laws Ann. § 712A.19a(7)(a)(West Supp. 2009); Mich. Ct. R. 3.973(F); Mich. Ct. R. 3.975(A), (F), and (G)).


126 Id. (citing Mich. Comp. Laws Ann. § 712A.19a(3) (West Supp. 2009)).


The court did not note that the Michigan Court Rule that governs dispositional review hearings states that the court must also review “the services provided or offered to the child and parent, guardian, or legal custodian of the child . . . .”\textsuperscript{129} Thus, the reviewing court must not only assess the progress that a parent has made, it must also assess the State’s actions taken toward facilitating reunification. In addition, because the case service plan must state which services the state plans to offer, the court’s review should, at a minimum, include reviewing the State’s compliance with the plan.\textsuperscript{130}

The court also did not note that the Michigan court rule governing the procedure at the permanency planning hearing requires more than the statute requires. It mandates that the court determine if the State has “made reasonable efforts to finalize the permanency plan. . . . .”\textsuperscript{131} Thus, under the statutes and court rules that the court agreed govern procedure in the child protective proceeding, the court must look not only at the parent’s effort to comply with the plan, but also at the State’s effort to provide the child with a

\textsuperscript{129} \textsc{Mich. Ct. R. 3.975 (F)(1)(a)}. Even though the court did not specifically mention this court rule, its holding is broad enough to include all of the court rules that apply in child protective proceedings.

\textsuperscript{130} \textit{See} \textsc{Mich. Ct. R 3.965(D)(1)}

\textsuperscript{131} \textsc{Mich. Ct. R. 3.976(A)}. 
permanent placement, either back to the child’s home or in some other long-term placement.\textsuperscript{132}

\section*{C. The Required Procedures – Federal Statutes and Regulations}

As noted, four justices agreed that the state’s child welfare procedures must comply with federal statutes and regulations.\textsuperscript{133} The court mentioned the following federal statutes and regulations regarding mandatory services with which the State and courts in a child protective proceeding must also comply. Calling them “most applicable,”\textsuperscript{134} the court stated:

\begin{itemize}
  \item The State must make reasonable efforts to prevent removal of a child from home and to return that child to his or her family. In other words, the State must make “‘reasonable efforts . . . to preserve and unify families.’”\textsuperscript{135}
  \item The State’s service plan must include services to both of the parents to facilitate the child’s return to the family.\textsuperscript{136}
  \item The State must develop the service plan together with the child’s parents or guardian. The plan must include a description of services already offered to prevent the removal of the child from the family and of services to be offered to reunify the family.\textsuperscript{137}
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\textsuperscript{132} Mich. Ct. R. 3.976 (E).

\textsuperscript{133} See supra n. 99 and accompanying text.

\textsuperscript{134} Id. at 604.

\textsuperscript{135} Id. (quoting 42 U.S.C. § 671(a)(15)(b) (2006)).


\textsuperscript{137} Id. at 605 (citing 45 C.F.R. § 1356.21(g)(1), (4) (2008)).
• Most significantly, according to the court,

  The State must make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child’s safety is assured [and] to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child) . . . .

D. Required Procedures – The State’s Children’s Foster Care Manual

The Michigan and federal statutes require the State to develop regulations and policies regarding children in foster care. Those policies and regulations also require the State to perform certain acts. The policies and procedures for Children’s Protective Services and Foster Care are available on the Internet. According to the Children’s Foster Care Manual:

138 Id. (citing 45 CFR § 1356.21(b)(2008)).

139 Id. (citing 45 CFR § 1356.21(g) (2008); MICH. COMP. LAWS ANN. §§ 722.111 to 711.128 (WEST 2002 & WEST SUPP. 2009); cf. MICH. COMP. LAWS ANN. § 712A.13a(8) (WEST SUPP. 2009)).

While Justice Cavanagh did not expressly state that the State must follow its policies set out in these manuals, Justice Cavanagh agreed that the DHS policies, along with Michigan statutes and court rules, and federal statutes and regulations set forth procedures “that help ensure adequate due process protection for parents.” Rood, 763 N.W.2d at 615 (Cavanagh, J., concurring in part). If the DHS policies help ensure adequate due process, the State should be complying with them.

• The State must involve the family, including both parents, in devising a case service plan. ¹⁴²

• The case service plan must outline what the parents must do to reunify the family and what the State must do to support the parents’ goals. ¹⁴³

• The foster care worker must meet with each parent in the parent’s home.¹⁴⁴

• The foster care worker must keep regular phone contact with the parents.¹⁴⁵

• The foster care worker must use parenting time to strengthen parent/child bond and must provide parenting time for each parent.¹⁴⁶

• The state may direct its initial reunification efforts to the home from which the child was removed – that of the custodial parent.¹⁴⁷

• The state may, however, shift its efforts to reunify from the custodial to the non-custodial parent where the situation warrants.¹⁴⁸

• No matter which household the State initially focuses its reunification efforts on, the State must complete a family assessment of needs and strengths for each household with a legal right to the child, unless the


¹⁴² Rood, 763 N.W.2d at 600 (citing CFF 722-6 at 1).

¹⁴³ Id. at 600-01 (citing CFF 722-6 at 2-3).

¹⁴⁴ Id. at 601 (citing CFF 722-6 at 5-6).

¹⁴⁵ Id. (citing CFF 722-6 at 5-6).

¹⁴⁶ Id. (citing CFF 722-6 at 7).

¹⁴⁷ Id. at 602 (citing CFF 722-7 at 2).

¹⁴⁸ Id. (citing CFF 722-7 at 2).
State cannot locate a parent, unless the parent will be incarcerated for more than two years, or unless the parent refuses to participate.\textsuperscript{149}

\textbf{E. The State Did Not Comply With The Required Procedures}

As the court stated, “compliance with the relevant laws and regulations was sorely lacking with regard to respondent.”\textsuperscript{150} That is understatement.

From the moment that the State took his daughter into custody, Darroll Donald Rood did not receive the services the statutes mandated. The child’s mother told him that his daughter was in State custody; the State’s child protective services worker did not.\textsuperscript{151} Even though he gave the State’s child protective services worker his cellular telephone number, his girlfriend’s cellular telephone number, and his address,\textsuperscript{152} the court and the State used that address to notify him of only one of the six hearings in his daughter’s case.\textsuperscript{153} For all of the other hearings, the court used an outdated address, even when it knew that mail to that address had been returned as undeliverable.\textsuperscript{154}

\textsuperscript{149} Id. (citing CFF 722.8a at 1).

\textsuperscript{150} Id. at 606.

\textsuperscript{151} Id. at 590.

\textsuperscript{152} Id. at 591.

\textsuperscript{153} Id. at 606. This violated Mich. Comp. Laws Ann. § 712A.19a(2) (West Supp. 2009).

The statutory, regulatory, and procedural violations continued. When Mr. Rood spoke with the State’s child protective services worker to tell her that he wanted his daughter placed with him, she actively discouraged him stating that the State would seek to reunify his daughter with her mother, not her father.\textsuperscript{155} She never told him that the State would assess his home as a viable placement for his daughter.\textsuperscript{156} She never told him that services were available to help him to become a viable placement for his daughter.\textsuperscript{157} She never told him that the State would create a case service plan and that he should be involved in that process.\textsuperscript{158}

At the preliminary hearing, which Mr. Rood did not attend (notice had been sent to an incorrect address), the trial court compounded the violations.

\textsuperscript{155} \textit{Id.} at 590. This violated a procedure in the Children’s Protective Services Manual (which the supreme court did not consult). The Children’s Protective Services Manual states: “\textbf{Note: Initial placement with a non-custodial parent,} voluntary or court ordered, \textit{is not considered an out-of-home placement} per 1973 PA 116 . . . and it is therefore the responsibility of CPS to monitor and provide services.” \textsc{State of Michigan, Department of Human Services, Children’s Protective Services Manual CFP 715-4} at 1 (2009) (some emphasis in original; some emphasis added).

\textsuperscript{156} In fact, the foster care worker testified at the termination trial that she would have ordered a home study had she had earlier contact with Mr. Rood. \textit{Id.} at 607, n.49. This violated CFF 722.8a at 1.

\textsuperscript{157} \textit{Id.} at 591. This violated CFF 722-6 at 1-3.

\textsuperscript{158} \textit{Id.} at 606. This violated \textsc{Mich. Comp. Laws Ann. § 722.954a(2)} (West 2002), \textsc{Mich. Ct. R. 3.965(E)}, and CFF 722-6 at 1.
The court did not order the State “to identify and consult with relatives . . . .”\textsuperscript{159} The court did not expressly determine if Mr. Rood had been notified, or if anyone had attempted to notify him.\textsuperscript{160}

In preparing the Initial Service Plan and Updated Service Plans, the foster care worker added to the growing list of violations. She never contacted Mr. Rood before preparing the initial plan,\textsuperscript{161} yet the plan stated that Mr. Rood was not willing to participate in the service plan.\textsuperscript{162} Later Updated Service Plans still indicated that Mr. Rood was not willing to participate.\textsuperscript{163} The Kinship Resources and Placement section of the Updated Service Plans indicated that the State was not considering placing Rood’s daughter with a relative because “[t]here are no appropriate relatives.”\textsuperscript{164} And even though the foster care worker had Mr. Rood’s correct address and telephone number, her

\textsuperscript{159} Id. at 591. This violated Mich. Ct. R. 3.965(E).

\textsuperscript{160} Id. at 606. This violated Mich. Ct. R. 3.965(B)(1).


\textsuperscript{162} Id. at 606-07.

\textsuperscript{163} Id. at 607.

\textsuperscript{164} Id..
only attempts to contact him were calls to the child’s mother to see if she knew where Mr. Rood was.\textsuperscript{165}

The child protective services worker did offer parenting time to Mr. Rood.\textsuperscript{166} She told him to contact the foster care worker to schedule it.\textsuperscript{167} Mr. Rood did not take advantage of the offer because he did not want to reenter his daughter’s life only to have to leave it again once his daughter and her mother were reunited.\textsuperscript{168}

\textbf{F. The Trial Court Erred When It Terminated Mr. Rood’s Parental Rights, And The Error Affected Mr. Rood’s Substantial Rights.}

Perhaps the worst violation of statutes, court rules, regulations, and procedures came when nobody ever notified Mr. Rood that his parental rights were at stake in a case against the child’s mother.\textsuperscript{169} The court terminated Mr. Rood’s rights under Mich. Comp. Laws Ann. § 712A.19b(3)(g) (West Supp. 2009)\textsuperscript{170} and under Mich. Comp. Laws Ann. § 712A.19b(3)(j) (West Supp.

\begin{flushright}
\textsuperscript{165} \textit{Id.} This violated CFF 722-6 at 5-6. \\
\textsuperscript{166} \textit{Id.} at 590. \\
\textsuperscript{167} \textit{Id.} \\
\textsuperscript{168} \textit{Id.} at 591. \\
\textsuperscript{169} \textit{Id.} at 609. \\
\textsuperscript{170} “The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.” \textsc{Mich. Comp. Laws Ann. § 712A.19b(3)(g)( West Supp. 2009).} 
\end{flushright}
in part because Mr. Rood had not participated in services or in any of the proceedings (save one) before the termination of his parental rights trial.\textsuperscript{172} And when Mr. Rood’s counsel asked to adjourn the termination trial so that Mr. Rood could begin participating in services, the trial court denied his request.\textsuperscript{173}

Because Mr. Rood had been denied the opportunity to participate in services, the trial court did not have all of the information it needed to support its decision that the State had proven both of the grounds for termination of his rights by clear and convincing evidence.\textsuperscript{174} Stated otherwise, the court did not have enough information to conclude, without speculating, that Mr. Rood would not be “able to provide proper care and custody within a reasonable time considering the child’s age.”\textsuperscript{175} And because the court had virtually no information about Mr. Rood, information it would have had had the State followed the statutes, regulations, court rules, and its internal procedures, the

\begin{itemize}
\item \textsuperscript{171} “There is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.” \textit{Mich. Comp. Laws Ann.} \textsection 712A.19b(3)(j)(West Supp. 2009).
\item \textsuperscript{172} Rood, 763 N.W.2d at 609.
\item \textsuperscript{173} \textit{Id.}
\item \textsuperscript{174} \textit{Id.} at 610.
\item \textsuperscript{175} \textit{Mich. Comp. Laws Ann.} \textsection 712A.19b(3)(g)(West Supp. 2009).
\end{itemize}
court could only speculate about whether Mr. Rood presented a danger to his daughter were she to be placed in his custody.\footnote{176}{“There is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.” Mich. Comp. Laws Ann. § 712A.19b(3)(j)(West Supp. 2009). Rood, 763 N.W.2d at 609, 612 n. 55.}

As the court noted, even if Mr. Rood had chosen not to participate in the proceeding against the child’s mother, he did not give up his constitutional parental rights\footnote{177}{Santosky v. Kramer, 455 U.S. 745, 753 (1982).} to his child in a later proceeding against him to terminate his rights.\footnote{178}{Rood, 763 N.W.2d at 609.} Mr. Rood deserved the opportunity to meaningfully participate in services and to participate in proceedings against him before a court terminated his parental rights.\footnote{179}{\textit{Id.} at 612.}

V. The Court’s Additional Concerns Conflict With the Codified Law and Procedures Governing Child Protective Proceedings and Will Result in Longer Stays in Foster Care.

After the court determined that Mr. Rood had not received the notices and services that he was statutorily entitled to, the lead opinion notes its additional concerns regarding uniting a child with a noncustodial parent.\footnote{180}{This portion of the opinion received only three votes.}

The opinion specifically states that the court’s decision should not be read to say that the State cannot focus its initial reunification efforts on the custodial

\footnote{176}{“There is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.” Mich. Comp. Laws Ann. § 712A.19b(3)(j)(West Supp. 2009). Rood, 763 N.W.2d at 609, 612 n. 55.}

\footnote{177}{Santosky v. Kramer, 455 U.S. 745, 753 (1982).}

\footnote{178}{Rood, 763 N.W.2d at 609.}

\footnote{179}{\textit{Id.} at 612.}

\footnote{180}{This portion of the opinion received only three votes.}
parent, especially because, according to the court, the statute mandates that “a child be placed ‘preferably in his or her own home.’”\textsuperscript{181} The court stated:

Reunification efforts may be initially directed at a custodial parent when appropriate, consistent with the statutory preferences for a “child’s own home.” But if those efforts are unfruitful, the state must also make reasonable efforts to reunify the child with the non-custodial parent.\textsuperscript{182}

This interpretation of the court’s opinion conflicts with the codified law and procedures that the court cited to support its decision that the court erroneously terminated Mr. Rood’s rights. In addition, allowing the State to focus all of its reunification efforts on the custodial parent until the custodial parent fails to comply with the service plan will result in longer stays in foster care for Michigan’s children.

\begin{itemize}
  \item A. \textit{Filing a petition to terminate both parents’ rights to A. would not have been mandatory if the State had not focused all of its reunification efforts on the custodial parent.}
\end{itemize}

Initially focusing reunification efforts on the custodial parent conflicts with the procedures in the Children’s Protective Services Manual (which the court did not consult). As a threshold matter, the Children’s Protective Services Manual states:

\textbf{Note:} Initial placement with a non-custodial parent, voluntary or court ordered, is not considered an out-of-home placement per 1973

\textsuperscript{181} Rood, 763 N.W.2d at 612 (citing Mich. Comp. Laws Ann. § 712A.1(3)(West 2002)).

\textsuperscript{182} Id. at 613.
PA 116 . . . and it is therefore the responsibility of CPS to monitor and provide services.  

In other words, a child has not been “removed” from his or her “own home” if the child is placed with his or her non-custodial parent. This classification is extremely important because if the child has not been removed from home, the statutes, court rules, and procedures that govern out of home placements do not apply.

For example, the court must hold a permanency planning hearing if the child has been in an out-of-home placement for twelve months. And if the child has been in an out-of-home placement (foster care) for 15 out of the last 22 months, the court must order the state to initiate termination of parental rights proceedings, unless the State has not provided the necessary services.

So in Mr. Rood’s case, the CPS worker who told Mr. Rood that the State would reunify the child with her mother ignored the State’s own mandate; she should have immediately investigated Mr. Rood as a placement. Had the State placed A. with her father, the CPS worker would have been responsible for


183 STATE OF MICHIGAN, DEPARTMENT OF HUMAN SERVICES, CHILDREN’S PROTECTIVE SERVICES MANUAL CFP 715-4 at 1 (2009) (some emphasis in original; some emphasis added).

184 MICH. COMP. LAWS ANN. § 712A.19a(1)(WEST SUPP. 2009); MICH. CT. R. 3.976(B)(2).

185 MICH. COMP. LAWS ANN. § 712A.19a(6) and 712A.19a(6)(c)(WEST SUPP. 2009).
providing services to both Mr. Rood and to A.’s mother. Had the state placed A. with her father, A. would not have been in foster care, no permanency planning hearing would have been necessary, and the court would not have been mandated to order the State to file a petition to terminate either parents’ rights to A.

B. The court’s “additional concerns” renders the codified law that it held controls child protective proceedings meaningless.

1. “Own home” does not require the State to first concentrate its reunification efforts on the custodial parent.

The lead opinion’s interpretation of its opinion takes the phrase “own home” out of context and results in rendering all the codified law and procedures it cited meaningless. The statute that court cited, Mich. Comp. Laws Ann. § 712A.1(3), provides in full:

This chapter shall be liberally construed so 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 and the best interest of the state. If a juvenile is removed from the control of his or her parents, the juvenile shall be placed in care as nearly as possible equivalent to the care that should have been given to the juvenile by his or her parents.\(^\text{187}\)

Taken in context, the preference for the child’s own home reflects later statutory mandates that removal from home is the last resort. Michigan

\(^{186}\text{See In re A.P. & B.J. No. 286431 (Mich. Ct. App. May 5, 2009) for an example of how the State provides services to both the custodial and the non-custodial parent.}\)

statutes and court rules consistently contemplate that children and their families will receive services in their own homes. The court rules provide for a preliminary inquiry when a petition is filed that does not ask for removal of the child and the child is still in his or her own home. And if the State removes a child from his or her home, the State must, in a written report, explain the reasonable efforts the state made to prevent the child’s removal. In addition, the Children’s Foster Care Manual requires the Initial Service Plan to contain: “Details of the reasonable efforts that were made by CPS to prevent removal of the child(ren) from his/her home or the reasons why reasonable efforts were not provided.”

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188 See, e.g., Mich. Ct. R. 3.961(B)(6). Child protective proceedings are started with a petition. If the petitioner asks the court to authorize removal, it must specifically ask for that remedy in the petition.


190 See, e.g., Mich. Comp. Laws Ann. § 712A.18f(1) (West Supp. 2009) (report must detail services offered and if no services offered, must explain why); Mich. Ct. R. 3.963(B)(1) (court may order that a child be taken into custody, and if it does, it must “make a judicial determination that reasonable efforts to prevent removal of the child have been made or are not required.”) See also Mich. Ct. R. 3.965(D)(1) (if a court determines that a child should should be placed “with someone other than the custodial parent . . .” the court must also make a reasonable efforts to prevent removal determination); Rood, 763 N.W.2d at 600 slip op at 23 (“The agency must report what efforts were made and what services were provided, if any, to prevent removal or to rectify the conditions that caused removal.”).

2. The courts “additional concerns” conflict with the State’s procedures outlined in the Children’s Foster Care Manual and with the errors that the court held the State made in Mr. Rood’s case.

The court’s statement that the State may focus its initial reunification efforts on only the custodial parent conflicts with the Children’s Foster Care Manual, which four justices agreed that together with federal and state statutes, court rules, and regulations provides at least the minimum due process protections for a parent.\(^{192}\) In addition, that focus on the custodial parent conflicts with the errors that the court held the State to have made with Mr. Rood. The court’s “additional concerns” in the lead opinion would, had they been agreed to by four justices, have resulted in an internally inconsistent opinion.

For example, the court, with at least four justices agreeing, stated that when a child is removed from a parent’s home, both parents are entitled to notice of any proceedings.\(^{193}\) Moreover, at the preliminary hearing, as the supreme court noted, the probate or family court must determine if a parent has been notified and can adjourn the hearing until that parent can be

\(^{192}\) Rood, 793 N.W.2d at 598, 615 (Cavanagh, J., concurring in part).

\(^{193}\) Id. at 598-99 (citing Mich. Comp. Laws Ann. §§ 712A.19(5)(c) (West Supp. 2009); 712A.19a(4)(c) (West Supp. 2009); 712A.19b(2)(c) (West Supp. 2009); Mich. Ct. R. 3.921(B)(1)(a) and (d), (2)(c), and (3).
present. If only one parent is present at the preliminary hearing, the court must ask that parent about the other parent’s identity and whereabouts. If the child is not initially placed with the non-custodial parent, the foster care worker must attempt to identify and locate absent parent. The foster care workers must also engage the family, including all parents, in developing a service plan. The service plan must outline what the parents must do to reunify with their children and what DHS must do to support the parents’ goals. The foster care workers must also meet with each parent in that parent’s home, and the worker must keep in regular phone contact with the parents. In addition, the State must evaluate the strengths, weaknesses, and needs of each household with a legal right to the child, unless the State cannot locate a parent or the parent does not want to participate in services.

By saying, therefore, that the State, in effect, should focus its initial efforts to reunify on the custodial parent, the court did not take into account


195 *Id.* (citing Mich. Ct. R. 3.965(B)(13)).

196 *Id.* at 601 (citing CFF 722-6 at 2).

197 *Id.* at 600 (citing CFF 722-6 at 1).

198 *Id.* at 60 (citing CFF 722-6 at 2-3).

199 *Id.* (citing CFF 722-6 at 5-6).

200 *Id.* at 602 (citing CFF 722-8a at 1).
the court rules, statutes, and State procedures that say otherwise. Although dicta, judges and advocates should be mindful of these flaws.

C. The court’s initial focus on the custodial parent will result in longer stays in foster care.

Making the initial reunification efforts with only the custodial parent and shifting those efforts to the noncustodial parent when the custodial parent has failed to progress under the case services plan will result in children being kept longer in foster care. The 2008 amendments to the probate code contemplate that the state need no longer automatically file a petition to terminate parental rights when the child has spent the last 15 of 22 months in foster care.201 Thus, if “[t]he state has not provided the child’s family, consistent with the time period in the case service plan, with the services the state considers necessary for the child’s safe return to his or her home, if reasonable efforts are required[,]” the court need not order the State to start termination proceedings.202

If the court waits until the custodial parent has failed to complete and benefit from the services ordered, the child may already have been in foster care.

201 Mich. Comp. Laws Ann. § 712A.19a(6)(West Supp. 2009), provides that if the child has been in foster care for 15 out of the last 22 months, the court must order the State to initiate proceedings to terminate a parent’s rights.

care, away from both parents, for a year. If it is only then that it is appropriate to turn to the noncustodial parent to see if that parent is an appropriate placement for the child, the noncustodial parent would get another year or so to comply with and benefit from services.

The codified law and procedures themselves provide a sensible solution to the problem of children who are removed from one-parent homes. Neither the codified law nor the state’s procedures favor one parent over the other. Thus, consistent with the statutes and procedures, the State should involve the noncustodial parent in services and in a case service plan as soon as possible.

Participation in a case service plan can be voluntary; therefore, the State should also immediately assess the noncustodial parent’s home as an appropriate placement for the child. If that home is not yet appropriate, the State can provide services to both parents simultaneously to assure permanency for the child. Involving the noncustodial parent from the start will ultimately, if the noncustodial parent is successful in completing the case service plan, protect the child by preventing long stays in foster care.

203 The permanency planning hearing must be held no later than 12 months after the child was removed from his or her home. Mich. Comp. Laws Ann. § 712A.19a(1) (West Supp. 2009).

204 Mich. Ct. R. 3.965(E)(2) (“If placement is ordered, the court must, orally or in writing, inform the parties . . . (2) that participation in the initial service plan is voluntary unless otherwise ordered by the court . . . .”
The child is further protected from the uncertainty of no permanent placement if neither parent completes and benefits from the case service plan. If neither parent successfully completes the case service plan, the statute requiring the court to order the State to institute termination of parental rights proceedings if the child has been in foster care for 12 of the last 15 months would apply. The court could order the State to institute proceedings against both parents. At that point, the State and the court would have all of the information they need to decide if the statutory grounds for termination have been met.

In sum, the court’s concern that its opinion could be misread is misplaced. The opinion must be read recognizing that four justices agreed that the statutes, court rules, regulations, and State procedures govern the procedure in child protective proceedings. Until it stated its additional concerns in the lead opinion, the court had made it very clear that the State must involve the noncustodial parent from the very start of a child protective proceeding. Any other reading would render the statutes, court rules, and procedures that mandate locating and contacting a noncustodial parent meaningless.

Furthermore, involving the noncustodial parent from the start alleviates concerns about children spending too much time in an impermanent placement. And it alleviates concerns that the Court in Rood so plainly expressed – the court and the State would have all of the information they need
to determine if the statutory grounds for termination of parental rights have been proven by clear and convincing evidence.

Finally, while it could be argued that involving the noncustodial parent in the proceedings from the very beginning creates competition between two parents for placement of their child with one of them, the child is the person who ultimately benefits from that competition. After all, isn’t the goal safe, permanent placements for children? How can the child lose when the child has two qualified parents with whom to live?205

VI. The Next Steps For Children’s And Parents’ Advocates

The court’s extensive analysis of codified law and the State’s procedures should not be limited to only those situations where a noncustodial parent seeks custody of a child who has been removed from the custodial parent. If the federal statutes and regulations, the state statutes and court rules, and the State’s own procedures provide the minimum due process protections for the parents in a child protective proceeding, those procedures should apply in every child protective proceeding, not only in proceedings where a child has been removed from a parent. Furthermore, because the court emphasized the importance of complying with the statutes, regulations, court rules, and

205 If both parents successfully complete the case service plan, any former orders entered under the Child Custody Act would again take effect. In re A.P. & B.J., No. 286431, slip op. at 10 (May 5, 2009). Orders entered under the Child Custody Act are temporarily superceded by orders entered under the Juvenile Code when a child has been adjudicated a ward of the court. Id.
procedures, even those the court did not specifically mention will apply in all child protective proceedings. Child protective services workers and foster care workers should abide by them; courts should enforce them; and advocates should bring violations to the courts’ attention.

Children’s advocates and parents’ advocates should already have familiarized themselves with state and federal law in child protective proceedings. Now it is even more important for those advocates to familiarize themselves with the Children’s Protective Services Manual (the CFP)\textsuperscript{206} and with the Children’s Foster Care Manual (the CFF).\textsuperscript{207} These two manuals contain the State’s interpretation of the statutes and rules applicable in child protective proceedings and instruct child protective services workers and children’s foster care workers in how to comply with the statutes.

Children’s advocates and parents’ advocates should be referring to these manuals to ensure that child protective services and foster care workers are fulfilling their responsibilities to children and parents during the course of the child protective proceedings. Advocates should not wait until the trial to terminate the parent’s rights to argue a failure to make reasonable efforts. In


addition to advising their clients to participate in the case service planning and
execution, advocates should monitor their clients’ and the State’s progress
toward those plans’ goals.

Child Protective Services (CPS) workers are responsible for making
reasonable efforts to keep children safe in their homes.208 If a preponderance
of the evidence shows that the child was abused or neglected, CPS workers
must provide services to the family to prevent that child from being removed
from the family if the child can be protected in his or her own home.209 But
“protective services is primarily a crisis intervention service and cannot
effectively provide long-term treatment.”210

The Child Protective Services Manual contains chapters on, among other
things, intake (or investigating complaints),211 post-investigative services
(which includes information on involving families in services in their homes),212
and removal of children from their homes.213 For advocates whose clients are
working with CPS in their homes, these chapters provide the State’s view of

208 CFP 714-2; 715-2 at 1-2.

209 CFP 715-2 at 2. CPS workers must document the services they provided to
prevent the child’s removal from home. Id.

210 CFP 714-3 at 1.

211 CFP 711-6; CFP 712-1 to 712-9; CFP 713-1 to 713-13.

212 CFP 714-1 to 714-4.

213 CFP 715-2.
what their employees should be doing at each stage of the process. As such, they provide the advocate with a guide to helping their clients navigate the process.

As the process relates to reasonable efforts to keep children in their homes, the Children’s Protective Services Manual provides a list of examples of what reasonable efforts to prevent removal includes. Reasonable efforts to prevent removal may include: “24-hour emergency caretaker, homemaker, day care, crisis or family counseling, emergency shelter, emergency financial assistance, respite care, parent aid services, home-based family services, self-help groups, mental health services, drug and alcohol abuse counseling, and vocational training.”

If a child must be removed from an unsafe home, responsibility for that child and family transfers to the State’s foster care workers. Permanent placement is the ultimate goal for all children removed from their homes. Permanent placement may be achieved though reunification with the family, a

214 CFP 714-2 at 1.

215 Id.

216 CFP 715-4 at 1.

217 CFP 722-7 at 1.
guardianship, an adoption, placement with a fit and willing relative, or “some other planned permanent living arrangement.\textsuperscript{218}

Like the Children’s Protective Services Manual, the Children’s Foster Care Manual specifically details the foster care worker’s responsibilities to the child and to his or her parents. For example, the foster care workers must develop a service plan with a permanent placement in mind and must provide casework services to help resolve the conditions that brought the child into foster care.\textsuperscript{219} The foster care workers must seek input from the child’s parents – both of them – and must seek input from the child’s extended family and relative network in developing the case services plan.\textsuperscript{220} The Children’s Foster Care Manual provides detailed instructions on how to develop the plan.\textsuperscript{221}

The Manual also provides detailed instructions to foster care workers on the number of contacts they must make with parents while the case is pending.\textsuperscript{222} For example, during the first month of the case, the foster care

\textsuperscript{218} CFF 722-7 at 1.
\textsuperscript{219} CFF 722-6 at 1.
\textsuperscript{220} Id. at 1, 3.
\textsuperscript{222} CFP 722-6 at 5.
worker must make two face-to-face contacts with each parent, one of which must occur in the home.\textsuperscript{223} During that month, the worker must also make two phone contacts, if the parent has a telephone.\textsuperscript{224}

The Manual also acknowledges that the court must make a reasonable efforts finding for the case to be eligible for Title IV-E funding.\textsuperscript{225} The foster care worker is responsible for reviewing court orders to ensure that the court has made a reasonable efforts finding and to ensure that the court included the evidence it relied on to make the reasonable efforts finding.\textsuperscript{226}

The services the foster care worker provides or arranges for are the reasonable efforts the State makes to reunite the child and family and may include:

- Search for absent parent or other relatives.
- 24 hour emergency caretaker.
- Homemaker.
- Day care.
- Crisis or family counseling.
- Emergency shelter.

\textsuperscript{223} \textit{Id.}

\textsuperscript{224} \textit{Id}

\textsuperscript{225} \textit{Id.} at 12.

\textsuperscript{226} \textit{Id.} at 13.
• Emergency financial assistance.
• Respite care.
• Families First of Michigan.
• Home-based family services.
• Self-help groups.
• Parenting classes.
• Services to unmarried parents.
• Mental health services.
• Drug and alcohol abuse counseling.
• Vocational/job training reports.  

This brief overview of the Children’s Protective Services Manual and the Children’s Foster Care manual shows why advocates must become familiar with them. Failing to do so can be detrimental to the child and his or her family, no matter who the advocate represents.

VII. Conclusion

The court’s decision in Rood, although not perfect, has clarified Michigan’s reasonable efforts requirements. The standard the court set – comply with federal statutes and regulations, comply with state statutes and court rules, and comply with the procedures set out in the Children’s Protective Services Manual and the Children’s Foster Care Manual – now provide

\[227\text{ Id. at 13.}\]
reference sources for advocates and judges to determine if the State has made
the required reasonable efforts to reunite children and families if the child has
come into the foster care system, or to prevent removal from home if the child
can be protected at home. Because the statutes, court rules, and state
procedure manuals tell child protective services workers and foster care
workers what their duties to the child and to the family are, those workers now
know that they must carefully follow them when making their efforts for the
child and his or her parents.

Knowing what all must do will help all involved in child protective
proceedings to work together to further the wellbeing and safety of the children
involved. Accordingly, child protective services workers, foster care workers,
judges, and attorneys should become keenly aware of everyone’s
responsibilities under federal and state law and procedures. By complying
with those procedures, as the court in *Rood* said must happen, children will be
able to live in safe, permanent environments, and parents will know that the
State did all that it was required to do before asking to terminate a parent’s
rights to his or her child.