

4-97-1144

IN THE  
APPELLATE COURT OF ILLINOIS  
FOURTH JUDICIAL DISTRICT

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|-------------------------------|---|-----------------------------------|
| In Re The Interest Of         | ) |                                   |
| J.B.;                         | ) | Appeal from the Circuit Court     |
| Alleged To Be An Abused Minor | ) | of the Eleventh Judicial Circuit, |
|                               | ) | McLean County, Illinois.          |
| Appeal of:                    | ) |                                   |
| Deborah Britt                 | ) | No. 94-J-236                      |
| Respondent - Appellant,       | ) | Honorable Elizabeth A. Robb       |
|                               | ) | Judge Presiding                   |

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**BRIEF AND ARGUMENT OF RESPONDENT - APPELLANT**

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Oral Argument Requested

POINTS AND AUTHORITIES

**I. Whether Deborah Britt made “reasonable progress” toward the return of her child to her.**

**A. Whether Deborah Britt made reasonable progress where she completed parenting classes, and attended individual counseling and sex offender group therapy.**

In Re Doolan, 101 Ill.App.3d. 322 @ 324, 427 N.E.2d 1348, 56 I.D. 802 (1981).

In re B.W 282 Ill.App.3d 680, 669 N.E.2d 365, 218 Ill.Dec. 422 (1996).

In the Interest of L.L.S. 218 Ill.App.3d 444, 577 N.E.2d 1375, 160 Ill.Dec. 804 (4th Dist., 1991).

In Re J.P., 261 Ill.App. 3d. 165, 633 N.E.2d. 27, 8 Ill.Dec. 565 (4th Dist., 1994).

In Re A.H., 223 Ill. App. 3d. 536, 575 N.E. 2d. 261, 165 Ill. Dec. 901 (1992).

In Re S.J., 233 Ill. App. 3d. 88, 598 N.E. 2d. 456, 174 Ill. Dec. 259 (1992).

In re S.G. , 216 Ill.App.3d 668, 575 N.E.2d 932, 159 Ill.Dec. 125 (1991).

In the Interest of C.R.; 221 Ill.App.3d 373, 581 N.E.2d 1202, 163 Ill.Dec. 779 (4th Dist.,

1991).

In the Interest of A.H., T.E.H., and A.H., 215 Ill.App.3d 522, 575 N.E.2d 261, 159 Ill.Dec. 32, (4th Dist., 1991).

In re Clarence T.B., 215 Ill.App.3d 85, 574 N.E.2d 878, 158 Ill.Dec. 765 (1991).

**B. Whether DCFS Regulations so overwhelmingly favor visitation between parent and child in foster care that respondent mother could not have made reasonable progress where DCFS ignored those regulations and never afforded Deborah Britt a single visit since the shelter care hearing.**

**1. Cases on Frustration of Visitation**

Davis v. Bughdadi, 120 Ill.App.3d. 236, 458 N.E.2d. 177, 76 Ill.Dec. 38 (1983).

Perkins v. Breitbarth, 99 Ill.App.3d. 135, 424 N.E.2d. 1361 (1981).

In Re Hoback, 95 Ill.App.3d. 169, 419 N.E.2d. 713 (4th Dist., 1981).

In Regan v. Joseph P. et.al, 286 Ill.App.3d 889, 677 N.E.2d 434, 222 Ill.Dec. 231 (1997).

**2. Cases on Whether the Agency Must Obey its Own Rules**

Stull v. DCFS 239 Ill.App.3d 325, 606 N.E.2d 786, 179 Ill.Dec. 954(1992).

Central Illinois Public Service Company, v. Illinois Commerce Commission 243 Ill.App.3d 421, 610 N.E.2d 1356, @ 1360 183 Ill.Dec. 112 (1993).

Schinkel, v. Board of Fire and Police Commission of the Village of Algonquin, 262 Ill.App.3d 310, 634 N.E.2d 1212, 199 Ill.Dec. 858 (1994).

Springwood Associates v. Health Facilities Planning Board, 269 Ill. App. 3d 944, 646

N.E.2d 1374, 207 Ill.Dec. 287 (4th Dist., 1995).

**II. Whether Deborah Britt made “reasonable efforts” to correct the conditions that were the basis for removal of her child.**

**A. Whether Deborah Britt made reasonable efforts to complete parenting classes, individual counseling and attend sex offender group therapy.**

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**B. Whether DCFS Regulations so overwhelmingly favor visitation between parent and child in foster care that respondent mother could not have made reasonable efforts where DCFS ignored those regulations and never afforded the Deborah Britt a single visit since the shelter care hearing.**

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## NATURE OF THE CASE

This is a juvenile abuse case which went through termination of parental rights as to both parents. The father did not appear at the trial on the petition to terminate parental rights and his attorney eventually was allowed to withdraw from the case. The mother appeared and contested the “reasonable efforts” and “reasonable progress” allegations of the petition to terminate. Deborah Britt never received even one visit with her child despite participation in services and despite DCFS regulations which express a clear preference for visitation.

The court, sitting without a jury, entered judgment against both parents. There was no question raised on the pleadings.

## ISSUES PRESENTED FOR REVIEW

**I. Whether Deborah Britt made “reasonable progress” toward the return of her child to her.**

A. Whether Deborah Britt made reasonable progress where she completed parenting classes, and attended individual counseling and sex offender group therapy.

B. Whether DCFS Regulations so overwhelmingly favor visitation between parent and child in foster care that respondent mother could not have made reasonable progress where DCFS ignored those regulations and never afforded Deborah Britt a single visit since the shelter care hearing.

**II. Whether Deborah Britt made “reasonable efforts” to correct the conditions that were the basis for removal of her child.**

A. Whether Deborah Britt made reasonable efforts to complete parenting classes, individual counseling and attend sex offender group therapy.

B. Whether DCFS Regulations so overwhelmingly favor visitation between parent and child in foster care that respondent mother could not have made reasonable efforts where DCFS ignored those regulations and never afforded Deborah Britt a single visit since the shelter care hearing.

## JURISDICTION

On December 16, 1997, the Honorable Elizabeth A. Robb entered an order terminating the parental rights of Deborah Britt and John Britt. C491. On December 18, 1997, two (2) days later, a notice of appeal was filed on behalf of Deborah Britt. C494.



II. S. Ct. R. 303 (a) requires a notice of appeal from a final judgment of the circuit court to be filed within 30 days of the date of the judgment being appealed from.

## STATUTES AND REGULATIONS INVOLVED

### Statutes

|               |                                 |
|---------------|---------------------------------|
| 750 ILCS 50/1 | unfitness - reasonable efforts  |
| 750 ILCS 50/1 | unfitness - reasonable progress |

### Regulations

|                 |                                                                 |            |
|-----------------|-----------------------------------------------------------------|------------|
| DCFS Regulation | Section 305.50 Service Plan                                     | Resp Exh 6 |
| DCFS Regulation | Section 305.90 - Family Child Visiting.                         | Resp Exh 4 |
| DCFS Regulation | Section 301.210 Family Child Visitation - Subpart B: Visitation |            |
| DCFS Regulation | Client Service Planning - Appendix H Parent-Child Visit         |            |

### Other

|             |                                         |             |
|-------------|-----------------------------------------|-------------|
| DCFS Manual | Questions & Answers for New Caseworkers | Resp Exh 12 |
|-------------|-----------------------------------------|-------------|

## STATEMENT OF FACTS

On December 1, 1994, the McLean County State's Attorney's office filed in a petition for adjudication of wardship and initiated a shelter care hearing at the request of the Illinois Department of Children and Family Services to place Jennifer Britt. R.V.3 P.3. The petition alleged that Jennifer's mother Deborah touched her vagina and her father John allowed it to happen. C. 19. A shelter care hearing was had, the Court found probable cause to believe that the minor was abused and that it was a matter of immediate and urgent necessity that Jennifer be placed in shelter care. R. V. 3 P. 15.

Before the adjudicatory hearing, DCFS and the Children's Foundation created a service plan for this family. The goal selected was return home, chosen in part because "The father and mother would like Jenny returned to them." C. 31. Deborah Britt was to cooperate with services - psychological evaluation, parenting classes, sign releases, accept responsibility for the abuse and understand Jennifer's needs. C. 33-34. The visitation component of the Service Plan stated that visits were intended to aid in the

reunification of Jennifer with John and Deborah. C. 42.

An adjudicatory hearing was held on April 17, 1995. By this time the father and mother were charged in the petition and criminally with touching the child's vagina.

C.27.

At the trial DCFS investigator Betty Schapmire indicated that the minor was afraid of being taken away by her dad:

Q. Did Jennifer express any particular **fear** or concern as to, at the beginning of the interview?

A. Yes, she did. She said that she was afraid that she would be taken away.

Q. Did she ever, was she ever able to articulate how that was going to happen?

A. She said that her **dad** said he was going to take her away. (emphasis added.) R. V. 3 P. 55.

It was also disclosed at trial that John Britt had been physically abusive to his child. Ms. Schapmire related that dad hit her on the butt with a softball bat and spanked her with his hand. Father and daughter had secrets; she'd get into trouble if she told; Dad also laid on top of her a lot, and squished her like a bug. The minor related she would be in trouble with her dad for telling. R. V. 3 P. 66-68.

Bloomington police detective Michael Fazio also testified at the trial. R. V. 3 P. 117. He related facts similar to that of Ms. Schapmire as to the events of the investigation. He also remembered that Jennifer " was concerned about being taken away from her mother." R. V. 3 P. 122. The child related that her father told her not to

tell or he'd hit her with a baseball bat. She also described spankings and how her parents fought over that. R. V. 3 P. 137. Both parents were found to have abused Jennifer and an order of adjudication was entered. C. 55.

A dispositional hearing was held on July 11, 1995. Deborah Britt was in attendance, in the custody of the McLean County Sheriff, as she had admitted on June 29, in open court to have touched her child's vagina. As a result she was serving time in the county jail. R. V. 6 P.3. The dispositional report noted that she had no known record of prior involvements with the court. C. 59. Information gathered for the report did not come from the mother; her attorney, James Tusek told her not to cooperate as that would put her in "harm's way". C. 62.

Other information on Ms. Britt revealed she had been diagnosed as manic-depressive, had been molested by her brother, grandfather and her current husband. She was a high school graduate, and had suffered severe anxiety, major depression and post traumatic stress syndrome. C. 63-64. She was deemed to be "receptive to services in order to better manage her relationship with Jennifer". The dispositional report also noted that Jennifer was shunned at daycare by the other kids, she used to sit in a corner and cry "my mommy loves me". C. 65.

The DCFS Service Plan of May 23, 1995 noted that there had been unsatisfactory progress by both parents because their "attorneys have advised their clients not to have contact with the Children's Foundation personnel until court is completed." C. 60. The

(CF) and DCFS couldn't make referrals for Deb as her attorney advised her not to have contact with CF personnel. "Mrs. Britt was cooperative in signing releases prior to her attorney's advisement, and has signed a release for a psychological evaluation with Dr. Sekey." C. 74. The same was true regarding the counseling goal and the cooperation goal. C. 75 - 76. Although the Visiting Plan component of the Service Plan stated that Deb was to get weekly visits, she never received any visits with her child. C. 92.

Mrs. Britt testified at the dispositional hearing. She had had no contact with DCFS because her attorney Mr. Tusek told her not to do so<sup>1</sup>. She has had no contacts with her child because she was still incarcerated. R. V. 6 P.6. Deb indicated that she intended to stay in counseling with Tom Niebur, as his services are useful. She wanted to visit with Jennifer and eventually wanted her back. R. V. 6 P. 7-8.

The state argued that Jennifer should have no contact with mom until DCFS and Jennifer's therapist agreed on it. Ms. Britts' lawyer agreed with that request. Deb had already missed some appointments with service providers because she was incarcerated. R. V. 6 P. 9-10.

The Department filed in a Service Plan dated September 12, 1995. C. 121-173. It criticized Ms. Britt for not having done a psychological exam, although she had done

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Q. Now, actually you were hopeful or eager to talk to them before, but I told you not to?  
A. That is true. R. V. 6 P.6-7.

one with Mary Dellorto and Jane Veliz at the Department's request. C. 123, 140-148.<sup>2</sup>

That evaluation noted that Ms. Britt was attempting to obtain supervised visits with her daughter but DCFS refused to help her. C. 141. The evaluation made four recommendations; the last one was "Ms. Britt should be allowed supervised visitation with her daughter in order to maintain the parenting relationship".

Ms. Britt cooperated with an evaluation for sex therapy done by Thomas Niebur. That evaluation involved extensive psychological testing. The Hanson Sex Attitude Questionnaire revealed no distorted thinking regarding sex with children. The Carich-Adkerson Sex Offender Risk Assessment Scale indicates a low to moderate risk of sex offending. Low risk factors included, no criminal history, no sexual abuse history, no deviant fantasies, she was open and cooperative with no recent substance abuse history. Mr. Niebur recommended on-going long term individual and group psychotherapy. C. 136-139.

The Department filed in another Service Plan dated March 20, 1996. C. 216 - 282, C. 333 - 343. Once again, the social workers requested Ms. Britt complete a psychological evaluation. C. 217. She was rated as satisfactory as to completion of parenting classes and signing requisite releases. C. 336. The plan also wanted

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On the typed document there is a handwritten note that the psychological was completed. C125. On the future cooperation goal the task of doing the psychological is lined out by hand. C. 131. Both of these notes were probably generated at the ACR at the request of the DCFS reviewer.

counseling to deal with the sexual abuse issue, forgetting Ms. Britt was seeing Tom Niebur for that issue.<sup>3</sup> Id. Because of her “failure” to address this issue there was the possibility the case would be taken to legal screening; for now the permanency goal was still return home. C. 218-219.

The visiting plan portion of the Service Plan noted that visits have been suspended due to court order, therapist recommendation (Kim Brown) and lack of approval from probation. C. 224. It had now been about 16 months since mother had been allowed to see her child.

A Permanency Review Hearing was held on April 9, 1996. R. V. 8 P.4. The court admitted into evidence proof that Deb had completed her parenting classes. The State moved to continue the hearing. R. V. 8 P.5. The Permanency Review Hearing resumed June 6, 1996. Nancy Murrah of DCFS testified for the State. The Department wanted to change the goal from “return home” to “substitute care pending court decision”. R. V. 9 P.5. Ms. Murrah acknowledged that Deb was attending sex abuse counseling, but only sporadically because she couldn’t afford all the sessions. R. V. 9 P. 9. Ms. Murrah admitted that Ms. Britt had been asking for visits. R. V. 9 P. 10. Murrah noted in her report that Deb continues to cooperate with services through the CF. She had received

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She even had signed a release to get this information from Tom Niebur on 02/06/96 - see Respondent's Exhibit 13 - Children's Foundation mutual release to Bromenn Counseling - Tom Niebur. There is another handwritten note that she does go to Niebur for counseling, and she pays for it herself.



no visits yet but “they may become appropriate in the future”. C. 295. Deborah Britt also testified at this hearing that she had been asking for visits with her child from the Department, but had never received one visit. R. V. 9 P. 15. Deb Britt was now 19 months since seeing her child.

The State asked that the goal be changed from “return home” to “substitute care pending court decision”. Deb’s attorney argued that because he had never seen the therapist’s report advocating the state’s position of no visitation the goal should not be changed. The *guardian ad litem* also argued against the change in goal. The court changed the goal per the State’s request but allowed Mom’s attorney to be replaced because of his unfamiliarity with the next stage of the proceeding - termination of parental rights. R. V. 9 P. 20-29.

A petition to terminate parental rights was filed in by the State on August 5, 1996. C. 315. Doris Bienz testified first for the State. R. V. 13 P. 2-37. She was and is employed at Bromenn Counseling since 1988 and cofacilitates 3 sex offender groups and 3 domestic violence groups. R. V. 13 P. 3. Deborah Britt was a member of a sex offender group that she co-facilitates since April 18, 1996 and was still in that group as of her testimony. The group meets weekly for 80 minutes. Her partner, Tom Niebur did Ms. Britt’s sex offender evaluation, recommending that she go to group counseling. R. V. 13 P. 16. “She was fairly open and she participated like from the beginning”, referring to Deb Britt. R. V. 13 P. 17. Deb acknowledged in a group

session that she abused her daughter on June 10, 1996, less than two months after she was in group. R. V. 13 P. 18. Ms. Britt attended 46 of the 51 sessions scheduled. R. V. 13 P. 20.

On cross, Ms. Bienz said she was familiar with the foster care system and agreed with the proposition that if a parent never gets a visit that it's unlikely that reunification will occur. Bienz was aware that Deb had never been given a visit with her child. R. V. 13 P. 23-24. She did not know why mom has never been given a visit. R. V. 13 P. 32. She doubted anything inappropriate would happen if Ms. Britt was afforded visitation in a public place with supervision. R. V. 13 P. 25, 29. Deb was a low to moderate risk of re-offending, in contrast to her husband John who was assessed as a moderate to high risk of re-offending. This group sex treatment did not exist for women at Bromenn in December of 1994 when this case arose; it didn't begin until April 18, 1996 when Deb joined. R. V. 13 P. 27. In asking the witness to comment with regard to those in her field that never recommend contact between offender and victim, she stated:

Q. Are there people, counselors in your field that say that there should never be contact between an offender and the victim once it's happened regardless of treatment?

A. I'm not aware of that. It could be. I'm not aware of that. That wouldn't fit with our philosophy in treatment. R. V. 13 P. 36.

Jesse Sekey testified next for the State. He is a licensed clinical psychologist since

1993, and did a psychological evaluation on John Britt on July 21, 1995<sup>4</sup>. John never admitted to domestic violence against his wife or any female. R. V. 13 P. 37-47.

The next witness was taken out of order because she was from Green Bay, Wisconsin. Ann Pratt lived in McLean County for 20 years. She had a B.S., from Illinois State University in psychology, M.S. in social work, from the University of Illinois, holds an ACSW, and is licensed as a clinical social worker in Illinois. Ms. Pratt was a group home worker with Quakerdale in Iowa, then a homemaker for DCFS, then an investigator with DCFS, then a caseworker and finally an adoption specialist with them. She was also an adoption worker with the Baby Fold then assistant director of adolescent services at Chestnut Health Systems for 5 years before opening her own private practice. She was familiar with the child welfare system in general and DCFS in particular. R. V. 13 P. 49-50.

Ms. Pratt reviewed all the discovery in this proceeding. She stated that the Illinois Department of Children and Family Services has extensive policies pertaining to visitation which take into consideration the social work research extant in America today. R. V. 13 P. 51. The policies came from research regarding foster care. Ms. Pratt then presented 6 articles Respondent's Exhibits 1 A - 1F, each of which pertain to the issue of parent child visitation where kids are in foster care. Each of the articles were

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John Britt never appeared for any of the proceedings at the termination phase. His attorney was allowed to withdraw on March 13, 1997.

admitted into evidence without objection.

Ms. Pratt opined that Child Welfare, where 5 of the 6 articles were published is the leading journal in this field. The article by Peg Hess (Respondents Exhibit 1F) entitled *Case and Context: Determinants of Planned Visit Frequency In Foster Family Care*<sup>5</sup>, was representative of the other articles. It discussed “about how important visitation was and how much of an determinant visitation was in regards to the final outcome of a child that was placed in foster care”. Hess took this one step further concluding that the agency’s attitude and policies and how the social worker looks at visitation can determine the case. It noted that parents have little control over visitation as the social worker makes all the decisions. Pratt noted Deb has never received a visit with her child. The emphasis the Department places on visitation has increased from 1980 to 1997. R. V. 13 P. 55.

Q. And if visitation is never carried out, what happens?

A. Then you have a parent-child bond that is broken. R. V. 13 P. 54.

Respondent Exhibit 4 entitled Client Service Planning, Section 305.90 Family-Child Visiting, is straight from the DCFS rules and procedure manual. Ms. Pratt stated that

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Child Welfare Vol. LXVII, Number 4, July -August, 1988.

Q. And what does 305.90 suggest to , I take it caseworkers in determining whether there should be visitation or not?

A. Well, it doesn't just suggest. It literally states that visitation is the most valuable means of maintaining family relationships when a child is in placement. R. V. 13 P. 56.

Ms. Pratt's personal experience also indicated the importance of visitation:

Q. If the parent is not allowed to visit or if the parent refuses to visit, how does it impact on the child?

A. Part of it depends on the developmental age of the child. The younger the child is, because of the way the develop mentally, they still see themselves kind of the center of their universe and so they see themselves as very powerful. So, typically, when bad things happen to them, they assume that, somehow, that they have caused that; and even though we as adults may know that this is not a legitimate concern for the child, that doesn't mean that the child does not believe that. So when you have a child who, you know, one day is living with a parent and then, I mean, for all intents and purposes that parent disappears, what you have is a child who becomes emotionally disrupted. You have issues of trust. You have issues of abandonment. You have issues of damaged self-esteem. R. V. 13 P. 57-58.

Ms. Pratt stated that DCFS has a policy of when visits should be set after protective custody is taken, it's 14 days. And then its weekly visits if the permanency goal is return home, which it was in this case. That doesn't change even though DCFS delegated its responsibilities to the Children's Foundation. R. V. 13 P. 63. You also give visitation to get the parent involved in the planning of the visit; it is the "vehicle for healing" for the parent. The parent has failed in a major life responsibility, and they have lost control of their child. With visitation the parent becomes involved in the

reunification process, so the parent gets to work thru their grief. The social worker “is not just a child worker, they are a family worker”. That is the reason for procedure 305.90, page 2 (d).

Ms. Pratt acknowledged that visits need to be supervised in sex abuse cases so they are safe for the child. R. V. 13 P. 64-65. That’s why DCFS has Appendix K - Child Endangerment Risk Assessment - Respondent's Exhibit # 5. Appendix K lists the ways we make sure the child is safe during a visit. Based on her review of all the discovery in the case, there was never any indication to Ann Pratt that Deborah Britt ever threatened her child. R. V. 13 P. 66.

Respondent's Exhibit # 6 is Rule Section 305.50 - Service Plan, another procedure promulgated by DCFS. This is the crux of how the Department tries to get reunification to occur. It contains a visitation plan. Respondent's Exhibit 8 is a portion of the service plan - visitation plan. It is attached in every DCFS case where a child is in foster care. This case was unusual because mom is supposed to get at least weekly visits; it can be more frequent. R. V. 13 P. 67-69. Even during the time of Judge Caisley’s “no visitation” order in the criminal case, there had been a psychological evaluation performed at the Department’s request that recommended that visits should occur; that should have been brought to the court’s attention. In any event, the ban should have been lifted earlier. R. V. 13 P. 70-71. And once visits begin they should increase in length. Visits provide contact and an emotional relationship; the child sees

that the parent is safe and vice versa. The parent can give the child permission to be happy in placement. R. V. 13 P. 72. The parent may be learning parenting skills and has an opportunity to practice those on visits. Visits also need to increase so that the parent is empowered to take more responsibility; take the child shopping, go to a school program. R. V. 13 P. 73.

Ms. Pratt then discussed the theory behind Respondent's Exhibit # 7, which dealt with Placement and Visitation Services, and comes from DCFS Rule 301 Subpart B.

“It actually pulls off the research, the correlation between the regular parent visitation and continuing with the child and how that affects discharge and the outcome and return home, and it talks about the fact it’s to be established. In fact, good child welfare practice is when the child is removed or as soon thereafter that you establish a visitation plan. That’s both for the sake of the child and the sake of the parent to reduce anxiety. And if you have an emergency placement, within 10 days the visitation plan is supposed to be established. And, I 72 mean the Department’s rule is clearly that visitation is supposed to begin immediately, and that’s because they don’t want this bond to be broken between the child, and they don’t want the emotional issues that occur when visitation does not happen”. R. V. 13 P. 71-72.

Respondent's Exhibit # 9 is Placement and Visitation Services, Subpart C, The Foster Care Placement Goal from Rule 301 subpart C of the DCFS Rules and Procedures Manual. It talks about how there needs to be service planning in relation to visitation and the return home goal. The Department is to insure that parental visitation with

children is to be arranged and scheduled in compliance with service plan rules and procedures. Respondent's Exhibit # 10 is Client Service Plan, Appendix H - The Parent Child Visit Planning Critical Decisions and Documentation Protocol; Appendix H of Procedure 305 of DCFS Rules and Procedures. Certain decisions are to be documented on the visitation plan, especially variations from the weekly visitation schedule. If you are going to delay the initial visit, you should request that at the shelter care hearing and document the reasons for that. That never happened in this case. R. V. 13 P. 73-75.

Caseworkers are trained to know this right from the start. Respondent's Exhibit # 11 is an example of what new caseworkers get so they know how visits are to be handled. Visitation is one of the most difficult issues for a caseworker so it gets addressed extensively in training. Respondent's Exhibit # 11 details some of the social work research and theory as to why visits are so important. Caseworkers are also given Respondent's Exhibit # 12 which is a question and answer exercise on visitation for training purposes. R. V. 13 P. 76-77.

In the few months that Ann Pratt consulted on this case, she helped Deborah Britt get services that DCFS and the Children's Foundation never afforded her in three years. R. V. 13 P. 79-82.

Q. Based on what you have heard, your knowledge of DCFS rules and procedures, your experience in the field, your conversations with Deborah Britt, do you have an opinion as to whether DCFS and the Children's Foundation carried



out their casework responsibilities as to Deb?

A. They did not.

Q. And, briefly, the basis for that would be?

A. There was never any attempt to do visitation, and by the Department's own approach they identified that as the critical and one of the most for determining outcomes for reunification, and it was never addressed.

Q. Considering the way the Department and the Children's Foundation carried out their casework responsibilities and knowing Deborah Britt and some of the information that we talked about in this case, do you have an opinion as to whether Deborah could have been successful as to her visitation plan?

A. I don't see that there was ever any way that this could have been successful because Deb had such underlying issues of trust from her own life experiences and with the removal of this child and the subsequent 84 failure and trauma that was related to me. It is amazing to me that she has, without any kind of visitation, without any kind of reinforcement that at some point there was going to be a positive resolution to this situation, that she has carried out as many of the service plan tasks as she actually has because she did each of those with, somehow some belief that that was going to help. But it never resulted in her obtaining visitation, which is what she wanted. R. V. 13 P. 83-84.

All of the Respondent mother's Exhibits were admitted into evidence. R. V. 13 P.

85. On cross, Ms. Pratt explained that the Department trains its caseworkers using the "cure me trauma model", and the place that it starts is that as soon as possible. The perpetrator and the victim need to be brought together so that the healing can begin.

The child must be safe but the Department has adequate means to do that. R. V. 13 P.

92. Ms. Pratt was asked why visits should have been afforded the mother even though

she did not initially accept responsibility for the abuse.

Q. But even though mom had not taken -- responsibility and taken responsibility for her perpetration, you're of the opinion she should have been provided visits all along?

A. And in fact, visitation might have actually facilitated mother's being able to take responsibility earlier on. R. V. 13 P. 97.

Ms. Pratt's opinion on visitation wasn't based on the parents need - it's based on the child's need. The child still loves the parent. The more the separation from the child, the more you disassociated you become so it becomes more difficult to work on your goals. R. V. 13 P. 99-101. Parents are hurt and angry when a child is taken from them but the visitation process can enable them to go and do the tasks the social workers are requesting. R. V. 13 P. 103. The witness didn't see anything clinical in her review of the case that would make her believe that Deb would be a risk to re-offend. If the child's therapist said do not allow visits, the therapist would be enumerating problems that occurred because visits didn't happen in the first place. R. V. 13 P. 108. Although Maggie Gould, Jennifer's sex therapist said that sex offenders should never be allowed to have their kids returned to them, Ms. Pratt did not agree with that. R. V. 13 P. 109.

Ms. Pratt was asked why the parent should complain about the services she received, or didn't receive when they have administrative appeal rights. In addition to the fact that the court appointed attorney is not authorized to do service appeals, Ms.

Pratt saw no indication Deb Britt knew a service appeal was a possibility. She stated that because the ACR process is so intimidating, parents don't understand service appeals are available. R. V. 13 P. 104-105. Based on the facts that Deb needed psychiatric help, housing and counseling, it was not realistic to believe she'd pursue service appeals. R. V. 13 P. 110.

Tom Niebur testified next for the State. He is a therapist with Bromenn Counseling Services, degreed with a M.S. in Counseling Psychology from S.I.U.; some Ph.D. work from St. Louis University. He is a certified sex therapist, licensed clinical professional counselor, licensed marriage counselor, and a certified addiction counselor. Mr. Niebur runs several sex counseling groups and several domestic violence groups at Bromenn. R. V. 13 P. 111-112. He met Deb and did a risk assessment on her which included testing beginning February 28, 1995.

The first test was the Abel - Becker Cognitions Scale. She did not have cognitive distortions that would reinforce potential sex offenses. The Hanson Sex Attitudes Questionnaire did not indicate any belief of sexual entitlement, nor did it show she thought kids were sexy or attracted to her. Next was the Carich - Adkerson Sex Offender Risk Assessment Scale. She had an extensive history as a victim of abuse. He concluded Deb was a low to moderate risk to re-offend; on a 1 - 6 scale, she fell at a 2.5. His recommendation was that she continue with individual and long term group therapy. She had extensive psychopathology with depression panic disorders and post

traumatic stress symptoms. R. V. 13 P. 113-122.

At first Deb said it was possible that she abused Jennifer, but she had no recollection. After the assessment Deb began individual therapy with Tom. This began August 14, 1995. At that time there was a sex therapy group but it was all male. Her last individual session was February 26, 1996. R. V. 13 P. 123. Mr. Niebur was asked about Ms. Britt's progress.

Q. Okay. And did you see her at regular intervals between August of '95 and February of '96?

A. Well, I can give you -- she was restricted initially because of finances. She was -- in fact, at one of the sessions we had scheduled, she was falling behind in payments and she had come to the next session without payment, and I did not see her that particular time until she could get better caught up. R. V. 13 P. 123.

They met 7 of 9 times; she was absent once, and without money once. She then began the new weekly mixed (male and female) group with Tom & Doris Bienz. She attended the mixed group 46 of 51 times. She admitted in group on June 10, 1996 that she perpetrated on her daughter. She was taking medication for her depression at the time of the offense and her marriage was very stressful. R. V. 13 P. 124-125.

Mr. Niebur listed the factors that he wanted to exist before supervised visits could be recommended: 1. deviant impulses are at manageable levels, 2. she's willing to plan for visits and accept supervision, 3. she has accepted total responsibility, 4. no major differences between the victim and offender's stories about the abuse, 5. understands the impact of the abuse on the child, 6. willing to accept limits on the visit,

7. will disclose her risk to others, 8. she has completed the clarification process, 9. there are chaperones, 10. understands the possibility of reoffense, 11. accepts all the others who decide when reunification will occur. R. V. 13 P. 128. As of the date of the hearing, Ms. Britt hadn't met all the criteria for visitation, but she had only the clarification process yet to accomplish. Once she did that he would consider supervised visitation. R. V. 13 P. 129-130. Mr. Niebur was not sure when the clarification letter was proposed to the group. He thought it was the end of 1996. R. V. 13 P. 150.

On cross Mr. Niebur stated that Deb personally paid for him from the outset. Frequently DCFS pays the bill, but even when he noted she couldn't pay, he never called the caseworker to see if the Department would fund her treatment. R. V. 13 P. 134. Mr. Niebur opined that she was not predisposed to abuse children. He acknowledged that she was very pessimistic about the possibility of getting a visit from the social workers, R. V. 13 P. 140 and :

Q. Okay. Now, you mentioned, first of all, the criteria for visitation. were these criteria articulated to Deb Britt at some point in time?

A. No. ...

Q. Do you think, in looking back, it would have made sense for the specific criteria that Deb would have to meet that you believe are important for visits that she knew exactly what she needed to do?

A. Absolutely. R. V. 13 P. 137, 139.

There was a 3 month break after the assessment and before counseling. One of the problems is that she ran out of money, that limited the number of individual

sessions she could have. It would be rare to have a reunification without a year of treatment. The average is 2 - 3 years of treatment. Deb Britt had no problem regarding deviant impulse management. R. V. 13 P. 140-143. She did accept responsibility for the abuse. Deb was successful in understanding the impact of the abuse. R. V. 13 P. 146-7. Tom Niebur, the State's expert sex therapist, opined that Deborah Britt made significant progress and has used reasonable efforts since her assessment began in February of 1995. R. V. 13 P. 165. The case was adjourned at this point until September 23, 1997.

The hearing on the petition to terminate parental right resumed with the State calling Jane Veliz to testify. Ms. Veliz is a licensed clinical psychologist with a B.S. from Northern Illinois University, M.S. from Bradley University, and a PhD. from the Illinois School Professional Psychology. She was a doctoral intern at Bromenn Counseling '94-'95 and worked under Dr. Mary Dellorto. Jane met with clients and discussed them with Mary. She met Deb in April of 1995. The jail staff brought her over from the McLean County jail. Later Deb was released and came for her assessment on her own. Ms. Veliz did a background history, some IQ testing, and then personality testing. R. V. 14 P. 2-5. Ms. Veliz recommended psychotherapy and a sex offender program. If there was to be visitation with her child, it should be supervised. R. V. 14 P. 8.

On cross, Ms. Veliz stated that some people with Deb's diagnosis get better, and

can parent their child. They need services to get better. She does not recommend that offenders like Deb never get a visit, especially if they are working on their services. R. V. 14 P. 9-11.

Mary Dellorto testified next for the State. She is also a clinical psychologist, with a B.S. and M.S. from Illinois State University and a doctorate from the Illinois School of Professional Psychology in Chicago. In April of 1995 she was employed by Bromenn Counseling as clinical supervisor and worked with Jane Veliz. R. V. 14 P. 12-13.

Although she never met Deb Britt, she discussed the referral question, what kinds of tests to administer, and reviewed test results and report with Jane Veliz.

On cross, she opined that people like Deborah Britt can get better and parent their kids. She deals with DCFS, and is familiar with their regulations regarding the reunification of families including what “return home” means. That’s the Department’s goal to get families reunited. The following exchange then occurred:

Q. Let me ask you, if intuitively it makes sense to you that it’s important for there to be safe visitation between parent and child as one of the most effective means of getting a child back home?

A. Certainly. ... In order for someone to determine whether or not that mother or father can parent, it would be appropriate to observe that person in a parenting relationship with that child.

Q. Is there also, do you believe, a relationship to -- as to whether or not there is even a bond between a parent and child to observe?

A. Yes.

Q. And if I told you that the Department has not afforded Deb Britt a visit with her child for almost three years would that surprise you?

A. Yes.

Q. Do you think there is any way that a parent can work through a Service Plan and keep their hopes alive if they have not had a visit in 27 months?

A. I think that would be difficult. R. V. 14 P. 17-18.

Todd Smith testified next for the State. Mr. Smith is employed at the McLean County Center for Human Services (CHS) as day treatment coordinator. He is degreed with a B.S. in psychology and M.S. in counseling psychology, both from Illinois State University. He has been employed at CHS since May of 1990. In August of 1995 he was an outpatient therapist, and was Deb Britt's counselor. From August 25, 1995 until September 25, 1996 they met every week for 50 minutes as the result of a court referral and charge of sexual abuse. She paid for the sessions herself R. V. 14 P. 21-23, 30. Deb told him in August or September of 1996 that she was convicted of the sex offense and that the abuse indeed happened. Her therapy ended in September of 1996 when she ran out of money to pay for her counseling. When it ended he recommended that she continue with the mixed sex group at Bromenn. "And since money was a factor in attending the individual sessions, it would have -- my recommendations also would have been for her to continue individual therapy, but the money was not available for her to continue that". She signed releases to DCFS and the Children's Foundation. R. V. 14 P. 30, 33-34.



On cross Mr. Smith acknowledged that her stay in jail may have interfered with her attendance, as she made 22 of 40 counseling appointments. R. V. 14 P. 33-34. He admitted that sometimes DCFS pays for counseling for their clients when people are homeless. He knew that during this time frame that Deb said she was homeless and moved around frequently. R. V. 14 P. 35. The following exchange then followed:

Q. And as a psychologist, is it intuitive that it's important to maintain some sort of parent/child relationship if a parent is ever going to regain custody of that child?

A. In order to get children back -- it would -- part of getting the kids back would be visiting the kids.

Q. To maintain that bond?

A. To maintain that bond.

Q. And for the Department to actually look at the parents and see if the parent can function as a parent?

A. That would be -- that would be part of it.

Q. Conversely, does it make sense to you, if the Department decides never to give a parent a visit after a shelter care hearing, that might make the parent sort of disillusioned about the process?

A. That's possible.

Q. Did Deb Britt seem disillusioned to you?

A. I know that was one of the frustrations that she brought up in the therapy sessions. R. V. 14 P. 37.

Diane Horner testified next for the State. Ms. Horner is employed at the Children's Foundation as Resource Coordinator. She was a caseworker there, got the Britt case in June of 1995, and had it until April of 1997. Ms. Horner created the Service

Plan “with returning Jenny Britt home to her mother, the goal of the plan.” She agreed that her task was “to assist Jenny’s parents in fulfilling their part of the Service Plan”. R. V. 14 P. 40-41.

Ms. Britt’s service plan goals were to follow psychological evaluation recommendations of Jane Veliz, to sign consents, go to parenting classes and individual counseling, and to take responsibility for the abuse to Jennifer. There was no specific goal for sex offender treatment at first. R. V. 14 P. 43. Ms. Britt told her caseworker she didn’t have to cooperate because she did not see any way that she was going to have Jenny live with her. At that point it had been over 10 months since Deb had seen her child. R. V. 14 P. 52. In September, 1995, homeless Deborah Britt revoked various releases that she had signed, and dropped out of sight until late January of 1996. R. V. 14 P. 58-60.

Deb Britt resurfaced on January 29, 1996, called Ms. Horner and related her lack of housing, employment and general despair. Deb appeared for a hearing, and resigned several releases. R. V. 14 P. 61-62. Respondent’s Group Exhibit 13. She explained to her caseworker that she had been seeing Todd Smith and Dr. Damera. Ms. Horner could not remember if Deb related she was seeing Tom Niebur. R. V. 14 P. 63. She also stated:

“I explained that from my understanding from her probation officer that there was a no-contact order in place, that Deb was to have no contact without permission from Jenny’s therapist, and in order to get that permission, we needed to

meet. I needed to meet with Deb, and Jenny's therapist needed to meet with Deb and set up some guidelines, some expectations for visitations and make sure we could set up a visit that was beneficial for both mom and Jenny." R. V. 14 P. 65.

That conversation was on February 13, 1996. Ms. Horner said she had not received any information back from Bromenn Counseling or the Center for Human Services despite the releases signed a week before. R. V. 14 P. 66. On February 28, 1996, Ms. Horner also now remembers Deb saying she had been in treatment with Tom Niebur but that she "hadn't gone as much as she was supposed to". It had now been three weeks since the releases were resigned, but apparently no information had been received as to treatment. Diane did offer to assist her if she wanted to surrender her rights. R. V. 14 P. 67-68. All service plan goals were rated as unsatisfactory except for signing releases. R. V. 14 P. 70. As Horner never got verification that Deb was in treatment at CHS and Bromenn, the goal at the March, 1996 ACR was changed from return home to substitute care pending court decision. R. V. 14 P. 73. Horner stated it took 3 months to get verification of treatment from CHS and Bromenn. R. V. 14 P. 73-74.

In April, 1996, Deb related she thought of surrendering her rights and asked Diane to contact her service provider regarding sex treatment. Horner told Deb she had received statements back from service providers, but she needed Deb to tell her what services she was doing and with whom. Horner again testified that Deb Britt said she

had not been going to all her appointments. R. V. 14 P. 75-77. This exchange then followed; still on direct exam:

Q. Okay. So then did you send out a new request for information?

A. Not in May, because Deb still couldn't give me clearly who was providing what services, and help me to ask for -- what I needed to do was to clarify with these service providers what information I needed, and Deb wasn't able to help me clarify that. R. V. 14 P. 77.

Ms. Horner then related that for the first time Deb said she didn't have money for her services. Horner told Deb she could request funding from DCFS. She made the referral for the services to be paid for Niebur, Smith and Damera. R. V. 14 P. 78-80. In August of 1996 Deb told her she had been attending group counseling. Ms. Horner testified she had not received any verification of that despite the release signed by Ms. Britt was now 6 months old. R. V. 14 P. 82. Thus at the September Administrative Case Review, Deborah Britt was rated unsatisfactory as to individual counseling as there were no meetings with Kim Martin, unsatisfactory as to accepting responsibility for the abuse, unsatisfactory as to counseling for sex perpetration, and unsatisfactory as to visitation. Ms. Horner did have proof that the parenting classes had been completed. R. V. 14 P. 83-84. Due to the lateness of the hour, the hearing was continued to October 21, 1997.

On October 21, Diane Horner, still under oath and on direct exam resumed the stand. Ms. Horner now stated that Deb Britt was satisfactory as of the September, 1996

ACR as to completing her psychological. Deb had achieved her sex offender evaluation but was unsatisfactory as to accepting responsibility for the abuse. Deb was unsatisfactory as to visitation because there was a court order which said no visits unless they was approval by DCFS and the child's therapist. There could be no recommendation for visits because as of the September, 1996 ACR "I had no information on Ms. Britt as to what services she was participating in and what progress she was making". R. V. 15 P. 2-4. Cross examination followed.

Although Ms. Horner had previously stated that one of Deb's goals was to engage in counseling with Kim Martin of the Children's Foundation, (CF) when shown a copy of the March 20, 1996 service plan at page 4, she acknowledged that Deb was to counsel at Bromenn, and Kim was at CF. As of March, 1996 Horner was not sure if Deb was seeing Todd Smith. Horner now stated that she had no information as to whether Deb Britt was accepting responsibility for the abuse as of the March, 1996 service plan. R. V. 15 P. 7-11.

The witness was then shown Respondent's Group Exhibit 13, the releases signed by Deb Britt. Page 1 of that group exhibit was a consent signed 02/06/96 by Deb for CHS/Todd Smith. So Horner was wrong when she previously testified about having no release for the 09/96 ACR. R. V. 15 P. 13. There was a release signed by her client for Township:

Q. Okay. Would it be fair to say that people who need assistance from Township are generally people less affluent

than the rest of us?

A. I'm not sure who uses the services of Township. R. V. 15  
P. 15.

There was a release dated 02/06/96 for Tom Niebur. Ms. Horner didn't recall if after getting Tom's sex evaluation whether Deb had any treatment to do. R. V. 15 P. 15. The witness had a B.S. degree in psychology from Franklin University, and was in graduate school for a masters in social work. She was next shown her Respondent's Exhibit 1 A - F. Horner recognized the publishers of the articles because of her work in grad school, but was not familiar with any of them. This exchange followed:

Q. Okay. Does it make sense to you that if a parent never gets to visit, it's less likely that the kid will eventually go home? Does that make sense?

A. No. R. V. 15 P. 18.

The witness gets many referrals from DCFS but was not sure if DCFS has policies and procedures, and in any event was not familiar with them. She had heard of permanency plans, and the goal of return home. Return home was the initial goal in this case. R. V. 15 P. 19-20. She then admitted she was aware that if the goal is return home, there are DCFS rules regarding visits and that she was required to follow their policies. R. V. 15 P. 21. Horner acknowledged that Respondent's Exhibit # 7, the visiting plan indicated that there was to be a 1 hour a week supervised visit, but only when approved by the Department and Jennifer's therapist. It was never approved. R. V. 15 P. 22. There was a blank space on the plan. "Those are generally left blank so that they can -- that can be an agreed upon date" although she admitted they are

generally not left blank. R. V. 15 P. 23-24. The March, 1996 visiting plan was filled in and it said the visits were to be weekly on Mon 8:00 am - 9:00 am. However Deb Britt got no visits because of the court order from the criminal case, lack of therapist recommendation and lack of approval. She knew that Deb was placed on probation June 29, 1995. R. V. 15 P. 24-25.

The witness couldn't remember if Maggie Gould had stated that forever, there should never be anything other than supervised visits, . R. V. 15 P. 26. She read aloud from DCFS rule Sec. 301.210 (a). "The Department recognizes that there is a strong correlation between regular parental visits and contacts with a child and the child's discharge from placement service". Horner was not the caseworker at the time Deb pled guilty and didn't understand that once there was a guilty plea a probation order came into effect.

Q. Okay. So you didn't perhaps understand that it was okay to give visits at this point if there had been a probation order in effect?

A. No. R. V. 15 P. 28.

She acknowledged that it is the role of the caseworker to be a family advocate. She didn't remember the May 25, 1995 report written by her agency that Deb wanted her child back. She didn't know of Deb's economic situation and only now knows Deb was often homeless despite the fact that notices to Deb Britt were sent to the Home Sweet Home Mission and Safe Harbor, places for the homeless. She didn't know the Mission won't take sex offenders and still didn't understand that notices sent to the

Mission after the conviction for sex abuse never got to Deb. She didn't know of Deb's hysterectomy or her depression or her post traumatic stress problem. She did know that Deb had been beaten by her husband John. The witness was shown the probation order from Deb's criminal case in 94-CF-1104. where at p. 2. it stated "Have no contact with Jennifer Britt without approval of DCFS and have no unsupervised contact without Court Services Department approval." R. V. 15 P. 29-32, 43.

Horner variously stated that Deb Britt never asked for visits with her child, asked one time for a visit, then changed it to two times, then changed it to changes it to three times. R. V. 15 P. 34 The witness was then shown Respondent's Exhibit 14, the Maggie Gould letter of June 6, 1996 which provided in part that:

...the offender should never be alone with the child, should never be responsible for supervising or disciplining the child... R. V. 15 P. 35.

Horner stated that Deb would get contact when she showed some consistency and progress and interest in Jenny. Horner had the 02/96 release from Deb for Niebur. She got a letter from Tom Niebur saying Deb had been participating in counseling, and didn't recall if she got any other correspondence from Tom. Tom Niebur was offering the kind of treatment recommended by Maggie Gould. Deb's attending 46 of 51 groups was consistent attendance. R. V. 15 P. 42.

Q. Did you ever ask Tom Niebur, How's Deb doing?

A. I don't recall.



Q. Okay. So if we don't ask Tom Niebur any information and he's her sex counselor, I guess we'll never know if she's making any progress and then she'll never get a visit? Is that a logical sequence?

A. What are you asking? R. V. 15 P. 36.

The witness didn't think Deb was participating in group until summer of '97, R. V. 15 P. 39. about 15 months after the group began and about 18 months after she had a release to find that out. She had no contact with Tom Niebur in her notes during this time.

Q. Okay. Diane are you a parent?

A. Yes.

Q. Okay. Does it make sense to you that if you were away from your child for a long period of time, the bond between parent and child would tend to be lessened?

A. Would tend to what?

Q. Be lessened.

A. I am not able to answer that. R. V. 15 P. 40.

On redirect Assistant State's Attorney Judith Renner tried to rehabilitate her witness. Deb Britt was unsatisfactory at the September, 1996 ACR for failure to counsel with Bromenn as she was not always able to pay for the sessions. "However the CF/DCFS has provided Bromenn Counseling with the DPS letter to cover the cost of this service". The same letter was sent to Dr. Damera about CF/DCFS paying for him. R. V. 15 P. 49-50. She blamed Tom Niebur for the unsatisfactory rating as to the sex counseling goal as Diane never got the initial evaluation from him. R. V. 15 P. 51. Deb

was rated as unsatisfactory for the March, 1996 ACR for not receiving sex treatment and accepting responsibility because she had no information.

Q. If she was in treatment and needed help paying for it, you don't know about it; is that right?

A. Correct. R. V. 15 P. 56.

Diane Horner claimed that if she had known Deb had been in treatment she would have talked to Tom Niebur, to Jennifer's therapist and DCFS and worked on a plan for visitation, even though she was still not sure what treatment Deb was going to with Tom Niebur. R. V. 15 P. 57.

Kim Martin testified next. R. V. 15 P. 60. She was formerly Kim Brown, and now a Children's Foundation therapist 3 years. Ms. Martin had a B.S. from the University of California at Santa Cruz; M.S. University of Oregon. R. V. 15 P. 61. She knows Jennifer as she took over from Kathleen Hume as Jennifer's therapist in July, 1995. Although Deb Britt's service plan at some point had Ms. Martin providing counseling for Deb, she stayed with her therapists at CHS and Bromenn, as Ms. Martin didn't want to interfere with Deb's already ongoing therapy:

Q. Okay. And did you set up a treatment plan for the two of you at that time?

A. No because she had informed me she was seeing another therapist. I believe that was Mr. Niebur. R. V. 15 P. 66.

Ms. Martin also recalled "There were some financial concerns trying to work out payments; and I think, as I recall, the way we had left it was if there were problems with the financial aspect, she was certainly welcome to come back and see me." R. V.

15 P. 66.

Jennifer was seeing both Maggie Gould and Kim for counseling. Ms. Martin knew Jennifer was not getting visits with her mom. Kim didn't feel it was appropriate for Deb to see her daughter as she was struggling with her own personal issues. For Kim it was Deb's mental state. For Maggie unless the parents aren't making a lot of progress then there shouldn't be contact, period. R. V. 15 P. 69-73.

On cross the witness stated that:

Q. Okay. Does it make sense to you that the longer a parent doesn't get to see a kid, their only child, the less of the bond there's going to be over time?

A. Sure. R. V. 15 P. 75.

Martin was shown Respondent's Exhibit 1A - 1F. She was familiar with the publication Child Welfare as authoritative in her field. This exchange followed:

76 Q. If I told you that the theses of those articles was that when a child is placed in foster care, that whether or not the parent gets to visit is often outcome determinative of whether a child ever goes home. Does that surprise you?

A. No.

Q. Okay. So do I understand that essentially when you said let's not visit, you were essentially helping to make a decision that Deb would never see her child again?

A. I was trying to look for Jennifer's best interests. ...

Q. Okay. You talked about how distraught Deborah was, right?

A. Yes.

Q. Is it fair to say that a parent who's not been allowed to

see their kid for 18 months may become distraught?

A. Oh, I'm sure.

77 Q. Okay. So is it possible that we were creating a self fulfilling prophesy if we denied Deborah the right to see her child?

A. It's possible. R. V. 15 P. 76-77.

Martin also admitted to knowing the DCFS regulations pertaining to visitation and that a parent gets visits unless the parent is a present danger to the child. She also knew the goal of the Department was return home. R. V. 15 P. 78. She explained that the social workers changed the goal to substitute care on hearing from Deb that her parole mandated that she couldn't be alone with the child until 1999. Deb showed Ms. Martin a clarification letter that she was working on.

Q. Okay. In other words, if her probation officer said it was okay, that she could have supervised visits, ... she could have supervised contact?

A. Right. R. V. 15 P. 80.

At their first meeting Deb said she didn't think she would be getting visits. Jennifer expressed wanting to see her mom in September of 1995. The second time Kim saw her Deb was more hopeful. She was making more progress with Tom and Todd. Ms. Martin knew John had visits with his child and had made threats toward Jennifer. R. V. 15 P. 82-85. However therapist Kim Martin's reason for denying the natural mother visitation was somewhat vague, as there were never any threats aimed from mother to daughter:

Q. Okay. There's no indication that Deb Britt ever made

threats to her child after all this was over?  
A. My understanding is there were some loopholes in the policy so that if you think it's in the child's best interest, then you can make a recommendation. R. V. 15 P. 82.

With regard to Respondent's Exhibit # 5. the witness listed situations when social workers are not required to provide parents with visits. Examples include situations where the caretaker is violent and out of control. Martin admitted that this was not Deborah Britt. There was no listing dealing with homeless people. There are four pages of examples that were listed in the exhibit, but none applied. Martin clearly stated that there were no threats by mom, and no hint of escape with the child. R. V. 15 P. 88-90. The hearing was continued to December 12, 1997.

At the adjourned hearing Maggie Gould testified first for the State. R. V. 16 P. 1. Ms. Gould is now a case manager at the Baby Fold, she was a clinical intern at ABC Counseling. She attained a B.A. from the University of Missouri, '87; and a M.S. in Counselor Education from Illinois State University, in 1996. As an intern practiced counseling under the director of ABC and Professor Eddie Glenn at Illinois State University. R. V. 16 P. 2.

She did assessments on children to determine if they needed juvenile sex offender treatment or sexual abuse treatment. R. V. 16 P. 3. She met with Jennifer as her sex abuse therapist. She saw the child for 8 months, from May until December, 1996 weekly for an hour. R. V. 16 P. 4. Ms. Gould knew that Jennifer was visiting with dad, and not with mom. The witness was asked to recommend whether Jennifer

needed sex abuse counseling and whether she should get a visit with her mom. R. V. 16 P. 5.

Ms. Gould reviewed the literature about dealing with sex abuse victims and reunification or visitation with the perpetrator. ABC Counseling utilizes the work of Mary Meinig, a clinician in Seattle who works with sex abuse victims. The State offered Petitioner's Exhibits 1 & 2 entitled Offenders Family Contact Rules List, and Checklist of Suggested minimum Criteria for Visitation Between Offenders and Victims: Intra Familial Sex Abuse. R. V. 16 P. 7-8.

The Rules List is used when they've reached the point where visits are recommended - this happens when the victim's and perpetrator's therapist agree to a visit. R. V. 16 P. 9. The Checklist is : perpetrator to accept total responsibility, impulses are manageable, the perpetrator is willing to plan for and accept supervision during visits, no major differences between perpetrator and victims accounts of the abuse, intellectual understanding of the offense by perpetrator, approval from both therapists, perpetrator will accept limits on the visits, willingness by the perpetrator to disclose to others, ability of perpetrator to delay gratification, decreasing offender character traits, clarification letter and video by the perpetrator, completed chaperone education assignment, non-deceptive polygraphs regarding history and compliance with rules, the perpetrator accepts possibility of re-offense, the perpetrator accepts that spouse and family will decide about reunification, the perpetrator is cleared for visits

by the legal system. R. V. 16 P. 10-11.

Ms. Gould recommended that dad be cut off from visits because he never admitted to the abuse. She recommended mom not get a visit because mom had not admitted to the offense as of June '96. R. V. 16 P. 12-13.

On cross the witness acknowledged that Mom could admit to the offense by doing so in criminal court. R. V. 16 P. 15-16. She was generally familiar with DCFS regulations that deal with visitation, and understands the need to maintain a relationship between parent and child. It made sense to Ms. Gould that the bond between parent and child would become attenuated without visits. However, even if the DCFS regulation says the parent gets a visit so long as there is no threat to the child that's different than what Mary Meinig says to do. Doris Bienz' group therapy program at Bromenn would qualify under the Meinig standard. But even if Tom Niebur says she's a low risk to re offend, the criteria for the victim must be met before there is any contact between mother and child. R. V. 16 P. 19-20.

Q. And there's no allegation that this lady ever makes any threats at all; isn't that true?

A. Yes. R. V. 16 P. 19.

Q. So if a victim never makes progress, parent gets no visits?

A. Not necessarily. That's just something that we **21** also consider. R. V. 16 P. 20-21.

Q. Okay. So they could actually be alone with their kid eventually?

A. Probably not. There would have to be some sort of supervision there. R. V. 16 P. 22.

Q. And without a third person living in the home, you would disagree with the return home goal?

A. Yes. R. V. 16 P. 23.

Ms. Gould was clear, Deborah Britt could never be a single parent, even if she completes the program. She would always need a third person living in the home. R. V. 16 P. 22. However, the witness never looked at the reports from Tom Niebur and Doris Bienz. She would find it interesting if Deb Britt was classified as low risk to re-offend. That is one of the factors in deciding whether Deb should have gotten visits, but it is up to the child whether visitation ever happens.. R. V. 16 P. 29-30.

Q. Was your role to implement return home?

A. No.

Q. And if you had had that role, if you had thought that that was an important role, you would have asked for documents from Niebur and Bienz as to how mom was doing in sex treatment?

A. Yes. My role was to provide therapy. R. V. 16 P. 32.

Joyce Bryan testified last for the State. Ms. Bryan supervises caseworkers as a DCFS public service administrator, and was with DCFS for 8 years. She had a B.S. and M.S in Social Work from the University of Illinois and is a licensed clinical social worker. She personally supervised Jennifer's case. R. V. 16 P. 33-34.

Ms. Bryan wa

otherwise it's weekly visitation based on the best interests of the child. John got visits even though he didn't admit to the sex abuse. His visits ended when the goal changed because there were implied threats to the child. Deb Britt never received even one visit



although she never threatened her child, at first because there was a court order for no visits; then it was up to DCFS and the minor's therapists agreeing on visitation. Then it was up to DCFS alone. R. V. 16 P. 36-39, 62.

Petitioner's Exhibit # 3 is the court order in Deb's felony case. Petitioner's Exhibit # 4 is a letter from DCFS investigator Betty Schapmire to adult probation officer Kathy Hopper referencing the probation order of June 29, 1995 of no contact without DCFS approval. Judicial notice was taken of that felony file. Both of the child's therapists Kim Martin and Maggie Gould recommended no visits. Mom was out of touch, not participating or progressing in services, and "made statements" that Jennifer was responsible for the abuse and that Jennifer didn't protect her. At one point mom said she wanted to surrender. Ms. Bryan concluded that if visits are not in the child's best interests then they should not take place. R. V. 16 P. 40-44. She admitted that even if the therapists had recommended a visit it was unclear whether DCFS would have given Deb a visit. R. V. 16 P. 73.

On cross Ms. Bryan acknowledged that Respondent's Exhibits 1A-1F, taken from Child and Adolescent Social Work Journal and Child Welfare and Public Welfare are authoritative in her field. She does believe that there is a correlation between whether a parent visits a child in foster care and whether the child is returned to the parent, stating that "... if she had been having visits, that may have made a difference in her determination". She knew Deb was homeless and couldn't live at the Mission after the

felony conviction and that she was paying for her own services. R. V. 16 P. 59. The witness did feel bound by Respondent's Exhibit # 2, the DCFS Code of Ethics. The Children's Foundation was also bound by those rules. Thus she agreed that

“The child welfare professional makes reasonable efforts to help the parent meet the applicable standard of care, and recognizes the changing nature of the responsibilities of the professional to the parent based on the parent's response to intervention”. R. V. 16 P. 44-48.

Ms. Bryan admitted that Respondent's Exhibit # 4, the DCFS Rules and Procedures on Service Plans emphasizes the same policies that are in the journal articles - how important visitation is; DCFS regulation 305.90 says “visitation can positively address the issues which led to placement.” Parents need to have a role in planning for visits. visits can positively impact it. The first visit is supposed to take place within 10 days; and it doesn't matter if DCFS or a private agency is running the show. About 6 months after the shelter care hearing visits were allowed by court order. No visitation for 6 months does not happen frequently. Clearly the parent-child bond is attenuated without visits. The witness had never heard of Mary Meinig. R. V. 16 P. 48-51, 61.

For much of the case, the goal was return home and they changed it once they found out Deb had been in sex treatment for 14 months. R. V. 16 P. 68. Although DCFS doesn't pick treatment agencies based on their willingness to go along with the selected permanency goal, it would be problematic to have a counselor that didn't work toward the goal. Respondent's Exhibit # 15 was a letter from Maggie Gould to Kim Martin,

where the 4th paragraph says that the offender should never be alone with the child.

Apparently Bryan agreed that there could be a return home where a third party would have to be present forever. R. V. 16 P. 52-57.

Q. Does that afford - does affording someone a return home goal include, in your opinion, that the Department or its agencies provide services so that goal can be achieved?

A. Yes.

Q. And so the caseworker acts as a family advocate to implement those services?

A. Yes. R. V. 16 P. 58.

The State rested. Deborah Britt testified on her own behalf. She now lived at 612 1/2 W. Market St. in Bloomington. She had been employed mostly in temp jobs over the last 2 years, but was taking computer classes through job service. The mother of Jennifer admitted sexually abusing her child twice by touching her breasts and vagina. Deb was also a victim of sex abuse having been abused as a child by her grandfather, and was raped and beaten by her husband John. She never sexually abused any other child. She pled guilty to doing so to Jennifer and spent 6 months in the McLean County jail. R. V. 16 P. 76-78.

On her release from jail she had no place to live, was estranged from John and had been fired from work. At that point she was very depressed. She asked for visits and became devastated and depressed when they'd turn her down. Deb had never had a visit with Jennifer since protective custody was taken in 1994. They told her it was Jennifer's therapist who said visits weren't in the child's best interests. DCFS and the

Children's Foundation didn't help with services, only Ann Pratt assisted her. R. V. 16 P. 78-79. Ann got her a psychiatrist for medications, helped her to job hunt, helped her to remember things in her past; "she was like an advocate to me". R. V. 16 P. 80.

Diane (Horner) never cared about her, she was advocating for Jennifer. CF and DCFS made her feel like she didn't belong. At one Administrative Case Review (ACR) they passed around Jennifer's report card but never passed it to Deb; she had to ask to see it. At the ACR Diane would talk to Rose Powell like Deb wasn't there, even about adoption. "And even Ron Moody said, well, we haven't talked about adoption yet". Ms. Britt admitted she felt like surrendering because she didn't have a chance. R. V. 16 P. 80-81, 88-89.

She paid for services out of her own pocket. In calendar years 1995, 1996, and 1997 she earned about \$5000 a year. She admits to dropping out of sight from September 1995 until January 1996 - "I didn't have a job. I was very depressed. Sometimes it was hard for me to just get up and face the day let alone, you know, do anything productive". She paid for sex counseling with Tom Niebur and Doris Bienz, and a psychiatrist, and counseling with Todd Smith to the extent of her income. She asked Diane Horner to pay for them in 1996. Prior to that she didn't know DCFS had a contract to pay for services. Horner told Deb to call Nancy Murrah (DCFS) who in turn referred her back to Diane. Diane then told Deb to use your medical card, but Deb hadn't had a medical card since the shelter care hearing. At counseling you had to have

cash right then. CHS cut her off from counseling and psychiatric services. She was on Paxil, an anti-depressant, and that alone was about \$100/month. No transportation was ever offered to her, and she still had none. Deb was still attending sex therapy on the Wednesday nite group with Tom and Doris and had been since June, 1996. R. V. 16 P. 81-84.

Deborah Britt asked for another chance because she loves her daughter. Jennifer was almost 5 when she was taken away. She took care of Jennifer alone during the first 5 years of her life as she got little assistance from John. She acknowledged the “dirty house” case before the sex case. She was not sure what John did to Jennifer. Abuse could have happened when she was at work; John did physically abused Jennifer. Deb told him to stop spanking her and to put her into time out. John didn’t sexually abuse the child in Deb’s presence. R. V. 16 P. 85. The mother rested and the *guardian ad litem* did not put on any evidence.

The State argued that the mother failed to make reasonable progress or reasonable efforts to get her child back, she revoked her releases and didn’t meet DCFS’ criteria for visits. R. V. 16 P. 97-98. The mother argued that DCFS violated their own rules by refusing visits, and that their rules were created from the social science research on visitation which was also ignored. The rules of Mary Meinig were not adopted by the Department. **Return home means you get to visit with your child and plan for the future. Visitation is outcome determinative to the case.** R. V. 16 P. 102-

106. The *guardian ad litem* argued that because the therapists didn't favor visitation then visits were not in the child's best interests. R. V. 16 P. 107-108.

The Court ruled that the petition had been proven. Visitation would have been too damaging to the child. Deborah Britt made some progress but not enough. R. V. 16 P. 113-114. The case was set over until December 16, 1997 for a "best interests" hearing.

At the best interests hearing Dr. Marty Traver testified first for the State. She is a clinical psychologist familiar to the Court and counsel; there was a stipulation to her resume. Dr. Traver did a bonding assessment on Jennifer and the foster parent, Rose Powell who wanted to adopt Jennifer. R. V. 17 P. 2, 7. Dr. Traver noted that "She was not having visits with her mother at the time of the assessment." R. V. 17 P. 10. The witness concluded that "If parental rights are terminated I believe it's in her best interest to be adopted by Rose. There was no assessment done with the biological parents. R. V. 17 P. 14-15. She spent two hours with the child. R. V. 17 P. 24.

On cross Dr. Traver admitted there is a "strong correlation" in the social work literature whether a parent is allowed visitation and whether the child is returned home to the parent. R. V. 17 P. 21. She noted that the foster mother stated that the child said she was sad about not seeing her mother. R. V. 17 P. 23.

Kim Martin testified next. She stated that Jennifer has a strong attachment to the foster mother and favored letting Rose adopt her. Jennifer does miss her biological parents and is concerned at times about her mother. R. V. 17 P. 30. Martin was part of

the team that recommended the bonding study. She didn't think it would be fair to judge mom on how they bonded since there hadn't been any contact, so she wrote Nancy Murrah and recommended that mom be excluded from the bonding study process. R. V. 17 P. 33.

Rose Powell testified last for the State. She was Jennifer's foster mother for over 3 years. She wanted to adopt Jennifer. R. V. 17 P. 37-38. She admitted that Jennifer misses her mom and:

Q. Does Jenny appear to have any fear of her mother?

A. She hasn't expressed any.

Q. Did she early on?

A. I don't recall that she did.

Q. Was there some in regard to her father?

A. Yes. R. V. 17 P. 39.

The State rested. There was a stipulation that Deborah Britt did complete her parenting class. R. V. 17 P. 41. All parties rested. After argument the Court found that it was in the minor's best interests that the parental rights of both her parents be terminated. This appeal followed.

## ARGUMENT

### **I. Deborah Britt made “reasonable progress” toward the return of her child to her.**

**The standard of review utilized by the reviewing court pursuant to Il. S. Ct. R. 341 (e) (3) in petitions to terminate parental right cases is the trial court’s decision should not be disturbed on appeal unless against the manifest weight of the evidence. In Re Doolan, 101 Ill.App.3d. 322 @ 324, 427 N.E.2d 1348, 56 I.D. 802**



(1981).

A. Deborah Britt made reasonable progress where she completed parenting classes and attended individual counseling and offender specific sex therapy.

1. Introduction. It is axiomatic that parents with children in foster care must comply with any reasonable task requested by the Department in their service plan. In re B.W 282 Ill.App.3d 680, 669 N.E.2d 365, 218 Ill.Dec. 422 (1996), In the Interest of L.L.S. 218 Ill.App.3d 444, 577 N.E.2d 1375, 160 Ill.Dec. 804 (4th Dist., 1991).

2. The Service Plans. Deborah Britt did this. The DCFS Service Plan of May 23, 1995 noted that "Mrs. Britt was cooperative in signing releases prior to her attorney's advisement, and has signed a release for a psychological evaluation with Dr. Sekey." C. 74. The same was true regarding the counseling goal and the cooperation goal. C. 75 - 76. Mrs. Britt testified at the dispositional hearing. She had no contact with DCFS because her attorney Mr. Tusek told her not to do so. She has no contacts with her child because she was still incarcerated. R. V. 6 P.6. Deb indicated that she intended to stay in counseling with Tom Niebur, as his services are useful. She wanted to visit with Jennifer and eventually wanted her back. R. V. 6 P. 7-8.

The Department filed in a Service Plan dated September 12, 1995. C. 121-173. It criticized Ms. Britt for not having done a psychological exam, although she had done one with Mary Dellorto and Jane Veliz at the Department's request. C. 123,

140-148.<sup>6</sup> That evaluation noted that Ms. Britt was attempting to obtain supervised visits with her daughter but DCFS refused to help her. C. 141. The evaluation made four recommendations; the last one was “Ms. Britt should be allowed supervised visitation with her daughter in order to maintain the parenting relationship”.

Ms. Britt cooperated with an evaluation for sex therapy done by Thomas Niebur. That evaluation involved extensive psychological testing. Mr. Niebur recommended on-going long term individual and group psychotherapy. C. 136-139.

The Department filed in another Service Plan dated March 20, 1996. C. 216 - 282, C. 333 - 343. Once again, the social workers requested Ms. Britt complete a psychological evaluation. C. 217. She was rated as satisfactory as to completion of parenting classes and signing requisite releases. C. 336. The plan also wanted counseling to deal with the sexual abuse issue, forgetting Ms. Britt was seeing Tom Niebur for that issue.<sup>7</sup> Id. Because of her “failure” to address this issue there was the possibility the case would be taken to legal screening; for now the permanency goal was still return home. C. 218-219.

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On the typed document there is a handwritten note that the psychological was completed. C125. On the future cooperation goal the task of doing the psychological is lined out by hand. C. 131. Both of these notes were probably generated at the ACR at the request of the DCFS reviewer, probably Ron Moody.

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She even had signed a release to get this information from Tom Niebur on 02/06/96 - see Respondent's Exhibit 13 - Children's Foundation mutual release to Bromenn Counseling - Tom Niebur. There is another handwritten note that she does go to Niebur for counseling, and she pays for it herself.

3. **The Permanency Review Hearing.** A Permanency Review Hearing was held on April 9, 1996. R. V. 8 P.4. The court admitted into evidence proof that Deb had completed her parenting classes. The State moved to continue the hearing. R. V. 8 P.5. The Permanency Review Hearing resumed June 6, 1996. Nancy Murrah of DCFS testified for the State. The Department wanted to change the goal from “return home” to “substitute care pending court decision”. R. V. 9 P.5. Ms. Murrah acknowledged that Deb was attending sex abuse counseling, but only sporadically because she couldn’t afford all the sessions. R. V. 9 P. 9. Ms. Murrah admitted that Ms. Britt had been asking for visits. R. V. 9 P. 10. Murrah noted in her report that Deb continues to cooperate with services through the CF. She had received no visits yet but “they may become appropriate in the future”. C. 295. Deborah Britt also testified at this hearing that she had been asking for visits with her child from the Department, but had never received one visit. R. V. 9 P. 15.

4. **The Petition to Terminate Parental Rights Hearing.** At the petition to terminate parental rights hearing, Doris Bienz testified Deborah Britt was a member of a sex offender group that she co-facilitates since April 18, 1996 and was still in that group as of her testimony. The group meets weekly for 80 minutes. Her partner, Tom Niebur did Ms. Britt’s sex offender evaluation, recommending that she go to group counseling. R. V. 13 P. 16. “She was fairly open and she participated like from the beginning”, referring to Deb Britt. R. V. 13 P. 17. Deb acknowledged in a

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group session that she abused her daughter on June 10, 1996, less than two months after she was in group. R. V. 13 P. 18. Ms. Britt attended 46 of the 51 sessions scheduled. R. V. 13 P. 20.

Tom Niebur testified that he runs several sex counseling groups and several domestic violence groups at Bromenn. R. V. 13 P. 111-112. He met Deb and did a risk assessment on her which included testing beginning February 28, 1995. Mr. Niebur was asked about Ms. Britt's attendance.

Q. Okay. And did you see her at regular intervals between August of '95 and February of '96?

A. Well, I can give you -- she was restricted initially because of finances. She was -- in fact, at one of the sessions we had scheduled, she was falling behind in payments and she had come to the next session without payment, and I did not see her that particular time until she could get better caught up. R. V. 13 P. 123.

They met 7 of 9 times; she was absent once, and without money once. She then began the new weekly mixed (male and female) group with Tom Niebur and Doris Bienz. Deb attended the mixed group 46 of 51 times. She admitted in group on June 10, 1996 that she perpetrated on her daughter. She was taking medication for her depression at the time of the offense and her marriage was very stressful. R. V. 13 P. 124-125.

Tom Niebur concluded that Deb Britt had no problem regarding deviant impulse management. R. V. 13 P. 140-143. She did accept responsibility for the abuse. Deb was successful in understanding the impact of the abuse. R. V. 13 P. 146-7. Tom Niebur, the State's expert sex therapist, opined that Deborah Britt made

significant progress and has used reasonable efforts since her assessment began in February of 1995. R. V. 13 P. 165.

Todd Smith testified for the State. He has been employed at CHS since May of 1990. In August of 1995 he was an outpatient therapist, and was Deb Britt's counselor. From August 25, 1995 until September 25, 1996 they met every week for 50 minutes as the result of a court referral and charge of sexual abuse. On cross Mr. Smith acknowledged that her stay in jail may have interfered with her attendance, as she made 22 of 40 counseling appointments. R. V. 14 P. 33-34.

Diane Horner testified next for the State. Ms. Britt's service plan goals were to follow psychological evaluation recommendations of Jane Veliz, to sign consents, go to parenting classes and individual counseling, and to take responsibility for the abuse to Jennifer. There was no specific goal for sex offender treatment at first. R. V. 14 P. 43. In September, 1995, homeless Deborah Britt revoked various releases that she had signed, and dropped out of sight until late January of 1996. R. V. 14 P. 58-60.

Deb Britt resurfaced on January 29, 1996, called Ms. Horner and related her lack of housing, employment and general despair. Deb appeared for a hearing, and resigned several releases. R. V. 14 P. 61-62. Respondent's Group Exhibit 13. She explained to her caseworker that she had been seeing Todd Smith and Dr. Damera. Ms. Horner could not remember if Deb related she was seeing Tom Niebur. R. V. 14 P. 63. Diane did offer to assist her if she wanted to surrender her rights. R. V. 14 P. 67-68.

Ms. Horner testified that in August of 1996 Deb told Diane that she had been attending group counseling. Horner said she had not received any verification of that despite the release signed by Ms. Britt was now 6 months old. R. V. 14 P. 82. Thus at the September Administrative Case Review, Deborah Britt was rated unsatisfactory as to individual counseling (despite meeting with Todd Smith) as there were no meetings with Kim Martin, unsatisfactory as to accepting responsibility for the abuse and as to counseling for sex perpetration (despite having the evaluation and being in treatment and Tom Niebur said that she admitted the abuse in group), and unsatisfactory as to visitation. Ms. Horner did have proof that the parenting classes had been completed. R. V. 14 P. 83-84.

On October 21, Diane Horner, still under oath and on direct exam resumed the stand. Ms. Horner now stated that Deb Britt was satisfactory as of the September, 1996 ACR as to completing her psychological. Deb had achieved her sex offender evaluation but was unsatisfactory as to accepting responsibility for the abuse<sup>8</sup>. Deb was unsatisfactory as to visitation because there was a court order which said no visits unless they was approval by DCFS and the child's therapist. There could be no recommendation for visits because as of the September, 1996 ACR "I had no information on Ms. Britt as to what services she was participating in and what

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Even though more than two months had passed since Tom Niebur testified that Deb had admitted in group, about 20 months after she admitted in group, and 32 months after the plea of guilt in the criminal case.

progress she was making”(7 months after much of Respondent’s Exhibit 13 - the releases, were signed) R. V. 15 P. 2-4.

Although Ms. Horner had previously stated that one of Deb’s goals was to engage in counseling with Kim Martin of the Children’s Foundation, (CF) when shown a copy of the March 20, 1996 service plan at page 4, she acknowledged that Deb was to counsel at Bromenn, and Kim was at CF. As of March, 1996 Horner was not sure if Deb was seeing Todd Smith. Horner now stated that she had no information as to whether Deb Britt was accepting responsibility for the abuse as of the March, 1996 service plan. R. V. 15 P. 7-11.

The witness was then shown Respondent’s Group Exhibit 13, the releases signed by Deb Britt. Page 1 of that group exhibit was a consent signed 02/06/96 by Deb for CHS/Todd Smith. So Horner was wrong when she previously testified about having no release for the 09/96 ACR. R. V. 15 P. 13.

She got a letter from Tom Niebur saying Deb had been participating in counseling, and didn’t recall if she got any other correspondence from Tom. Tom Niebur was offering the kind of treatment recommended by Maggie Gould. Deb’s attending 46 of 51 groups was consistent attendance. R. V. 15 P. 42.

Q. Did you ever ask Tom Niebur, How’s Deb doing?

A. I don’t recall.

Q. Okay. So if we don’t ask Tom Niebur any information and he’s her sex counselor, I guess we’ll never know if she’s making any progress and then she’ll never get a visit?

Is that a logical sequence?

A. What are you asking? R. V. 15 P. 36.

The witness didn't think Deb was participating in group until summer of '97, R. V. 15 P. 39 about 16 months after she had a release to find that out. She had no contact with Tom Niebur in her notes during this time, and apparently no way to measure Deb's efforts. And apparently Horner was unable to measure much else...

Q. Okay. Diane are you a parent?

A. Yes.

Q. Okay. Does it make sense to you that if you were away from your child for a long period of time, the bond between parent and child would tend to be lessened?

A. Would tend to what?

Q. Be lessened.

A. I am not able to answer that. R. V. 15 P. 40.

Kim Martin also testified. R. V. 15 P. 60. Although Deb Britt's service plan at some point had Ms. Martin providing counseling for Deb, she stayed with her therapists at CHS and Bromenn, as Ms. Martin didn't want to interfere with Deb's already ongoing therapy:

Q. Okay. And did you set up a treatment plan for the two of you at that time?

A. No because she had informed me she was seeing another therapist. I believe that was Mr. Niebur. R. V. 15 P. 66.

At their first meeting Deb said she didn't think she would be getting visits. Jennifer expressed wanting to see her mom in September of 1995. The second time



Kim saw her Deb was more hopeful. She was making more progress with Tom and Todd. R. V. 15 P. 82-85.

5. Case Law on Reasonable Progress. In *In Re Doolan*, 101 Ill.App.3d. 322 @ 324, 427 N.E.2d 1348, 56 I.D. 802 (1981) one of the basis for termination was whether the mother made reasonable progress toward the return home of her child - "...what is reasonable progress is more objective, depending upon the amount of progress measured from the conditions existing at the time custody was taken from the parent". 101 Ill.App.3d. 322 @ 324. In announcing her decision on the case, the trial court noted that it is permissible to consider the entire post adjudication period in deciding whether adequate progress had been made. R. V. 16 P. 113. Case law confirms that decision was correct. In *Re J.P.*, 261 Ill.App. 3d. 165, 633 N.E.2d. 27, 8 Ill.Dec. 565 (4th Dist., 1994).

In order for a parent to make reasonable progress toward the return home of a neglected child, he must make a demonstrable movement toward that goal. In *Re A.H.*, 223 Ill. App. 3d. 536, 575 N.E. 2d. 261, 165 Ill. Dec. 901 (1992).

The A.H. case actually dealt with three children. The allegations were that at least one child had been sexually abused, and that all lived in a filthy and hazardous home environment. 575 N.E. 2d. @ 262. At the adjudicatory hearing the allegation pertaining to sex abuse was dismissed and the other stipulated to. The parents were to get counseling and homemaker services. Later there were further allegations of sex abuse. In fact there was testimony that the father had also sexually abused "his

niece, and two neighborhood children". 575 N.E. 2d. @ 263.

Eventually the state filed a petition to terminate parental rights. A pediatrician who examined the kids testified as to probable sexual abuse on two of the girls. A police officer stated that one child said daddy had fondled her and the other two refused to talk about sexual abuse to the officer. The foster parent also was told of sexual abuse by one of the children, perpetrated by the father, and that her mother stated "no, that did not happen".

A psychologist, Dr. Daniel Hocking, conducted a series of tests on the father and concluded he had some sociopathic traits which caused him to have difficulty in conscience development. When the same psychologist questioned the children, they immediately stated that their father had never touched them<sup>9</sup> and that DCFS was bad to them. Dr. Hocking also stated that during his counseling with the parents there was never any admission as to perpetrating or awareness of sexual abuse. A primary goal of his counseling was to educate the parents about the damage caused by sexual abuse. He also stated that

**a person who sexually abused another person must assume responsibility and the first step toward this is to acknowledge guilt. If this is not done, treatment for the problem will be unsuccessful. In terms of progress toward addressing the sexual abuse issue the parents were at a standstill. 575 N.E. 2d. @ 264.**

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However, when he met individually with one of the kids she stated that her father put his hands between her legs on several occasions.

There is no doubt from the evidence that Deb Britt assumed responsibility for the abuse. She said it, in open court and in mixed group therapy as did Tom Niebur and Doris Bienz, her sex therapists and Todd Smith her regular counselor. That is reasonable progress.

Although there were complaints that Deb Britt did not counsel with Kim Martin as well, that issue was address by Martin. In Re S.J., 233 Ill. App. 3d. 88, 598 N.E. 2d. 456, 174 Ill. Dec. 259 (1992), the mother was discharged from her inpatient therapy for drug addiction, and did not take parenting classes and missed scheduled visits. 598 N.E. 2d. @ 476, but she seemed to have quit using the drug. The appellate court explained In Re L.L.S., 218 Ill. App. 3d. 444, 577 N.E. 2d. 1375, 160 Ill. Dec. 804 (1991) which recognizes that

compliance with DCFS service plans is a means to a desired end, not the end in itself... A parent might succeed at reaching a goal envisioned by DCFS without following DCFS' specific directives... To hold that her failure to comply with the specifics of the service plans in this regard is probative of her lack of reasonable progress would unfairly and irrationally elevate administrative means over statutory ends. 598 N.E. 2d. @ 476-477.

In re S.G. , 216 Ill.App.3d 668, 575 N.E.2d 932, 159 Ill.Dec. 125 (1991) also holds that where the parents made measurable progress from the conditions that necessitated removal of the child, then rights cannot be terminated. The children were originally taken out of the home due to environmental neglect conditions. The parents made good progress with regard to the injurious environment. At

termination the State alleged that the parents failed to make progress in interacting with the children.

The State argues that the respondents "cannot nurture and care for their children" and that they "have made no measurable progress in genuinely interacting with their children." These accusations, however, were not at issue before the court. The inability to nurture or interact is not a proper statutory basis for the removal of children in this State. The children were originally taken away from the respondents because of the "injurious" environment at home; having made progress toward correcting that problem, the respondents should not have their parental rights terminated for these other nebulous, uncharged reasons. To decide otherwise would allow the State to terminate parental rights for nonstatutory reasons which were originally uncharged and which parents have no reason to know are possible bases for removal of their children. 575 N.E.2d @ 935.

This case is cited because the State argued that Deb Britt was unsatisfactory as to one of her goals - the failure to visit her child. In addition to the fact that any suggestion of being unsuccessful as to visitation is ludicrous based on the denial of visits, Deb should also not be terminated on a basis different than the one the child was removed for where she made progress on the issues relating to the reason the child was removed in the first place.

In each of the next three cases cited, the parents were accused of sexual abuse, the State and DCFS wanted their parental rights terminated and a significant factor to the reviewing court was whether the parents had acknowledged their role in the abuse.

**In the Interest of C.R., J.R. and M.R; 221 Ill.App.3d 373, 581 N.E.2d 1202, 163 Ill.Dec. 779 (4th Dist., 1991) the fathers parental rights were terminated on the “reasonable progress” issue where he was found to have sexually abused his child, but was still denying the sexual abuse at the time of the termination hearing. The Appellate Court had little problem dealing with that argument:**

**Ray suggests, given the circumstances of his incarceration, he has made reasonable progress. Without repeating the previous discussion, we reject Ray's contention. Ray was uncooperative in counseling with Dr. Cozubal, sporadically attended AA meetings and has failed to acknowledge responsibility for the sexual abuse. This cannot be characterized as reasonable progress sufficient to determine the trial court's order was against the manifest weight of the evidence. 581 N.E.2d. @ 1281.**

**In the Interest of A.H., T.E.H., and A.H., 215 Ill.App.3d 522, 575 N.E.2d 261, 159 Ill.Dec. 32, (4th Dist., 1991) the parents’ rights were, once again terminated for failing to acknowledge the sexual abuse that had been testified to. The psychologist who had been assigned to provide services to the parents stated that**

**a primary goal of the counseling was to educate Donald and Caren about the damage caused by sexual abuse. He explained that a person who sexually abused another person must assume responsibility and the first step toward this is to acknowledge guilt. If this is not done, treatment for the problem will be unsuccessful. 575 N.E. 2d. @ 264.**

**The Appellate Court found that “The most compelling evidence is the persistent denial of sexual abuse by both Donald and Caren. Both parents refused to acknowledge any sexual abuse occurred and refused to even discuss the matter with**

their counselors. Hocking testified that the first step toward dealing with sexual abuse is for the abuser to assume responsibility for his actions. Without that admission, any treatment would be unsuccessful and no progress can be made. A primary goal of all the client-service plans was for respondents to assume responsibility for the sexual abuse and to seek counseling regarding that abuse. Clearly, the refusal to accept that the abuse occurred and the refusal to discuss the matter with their counselor cannot be characterized as reasonable. 575 N.E.2d. @ 267.

Finally in *In re Clarence T.B.*, 215 Ill.App.3d 85, 574 N.E.2d 878, 158 Ill.Dec. 765 (1991) the Appellate Court found that, standing alone, a parent's failure to acknowledge that sexual abuse has occurred and to take steps to prevent children's exposure to that abuse, is sufficient to support finding of parental unfitness. Here the parents were both charged criminally with sex abuse but had been found not guilty. Because of the differing burdens of proof, that didn't stop the Appellate Court from concluding ... "that this clearly and convincingly establishes that respondents have failed to make reasonable efforts to correct the conditions which led to the children's removal and failed to make reasonable progress towards their return." Based on the admissions of Deborah Britt to the sex abuse, in criminal court, in sex therapy and to her counselor of long standing, not to mention the treatment with Tom Niebur, Deb Britt made very reasonable progress on her issues.

**B. DCFS Regulations so overwhelmingly favor visitation between parent and**

child in foster care that respondent mother could not have made reasonable progress where DCFS ignored those regulations and never afforded her a single visit since the shelter care hearing.

1. Introduction. The trial court found that Deborah Britt made some progress on her service plan goals; but it wasn't reasonable progress. R. V. 16 P. 113-114. Mom's argument here essentially asks the court to find that (1) DCFS has promulgated various rules, pursuant to their statutory authority to do so; and (2) those rules were rationally created based on social science research which established unequivocally that whether or not a child in foster care is returned to that parent is highly dependent on the nature of the visitation that DCFS affords the parent, and those rules express a clear preference for visitation absent any danger to the child from visitation; and (3) DCFS', as guardian of Jennifer Britt, ignored their own rules in totally denying visitation; and (4) as a result, DCFS frustrated mom's ability to make progress.

At the outset, Deb Britt acknowledges that there are no reported cases in this State that justify this argument. However, there are cases which say that when DCFS or someone else attempts to frustrate visitation, that interference in the parent child relationship can defeat an attempt to terminate parental rights; and there is also appellate authority that agencies such as DCFS must play by their own rules, once validly adopted.

2. The DCFS Regulations Come From the Social Science Research. The

fact that the DCFS rules were created from the social science research was not disputed by the State at the termination hearing. Ann Pratt testified that she was a group home worker with Quakerdale in Iowa, then a homemaker for DCFS, then an investigator with DCFS, then a caseworker and finally an adoption specialist with them. She was also an adoption worker with the Baby Fold then assistant director of adolescent services at Chestnut Health Systems for 5 years before opening her own private practice. She was familiar with the child welfare system in general and DCFS in particular. R. V. 13 P. 49-50.

Ms. Pratt reviewed all the discovery in this proceeding. She stated that the Illinois Department of Children and Family Services has extensive policies pertaining to visitation which take into consideration the social work research extant in America today. R. V. 13 P. 51. The policies came from research regarding foster care. Ms. Pratt then presented 6 articles Respondent's Exhibits 1 A - 1F, each of which pertain to the issue of parent child visitation where kids are in foster care. Each of the articles were admitted into evidence without objection.

Ms. Pratt opined that Child Welfare, where 5 of the 6 articles were published is the leading journal in this field. The article by Peg Hess (Respondents Exhibit 1F) entitled Case and Context: Determinants of Planned Visit Frequency In Foster Family Care <sup>10</sup>, was representative of the other articles. It discussed "about how

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Child Welfare Vol. LXVII, Number 4, July -August, 1988.



important visitation was and how much of an determinant visitation was in regards to the final outcome of a child that was placed in foster care". Hess took this one step further concluding that the agency's attitude and policies and how the social worker looks at visitation can determine the case.

It noted that parents have little control over visitation as the social worker makes all the decisions. Pratt noted Deb has never received a visit with her child. The emphasis the Department places on visitation has increased from 1980 to 1997. R. V. 13 P. 55.

Q. And if visitation is never carried out, what happens?

A. Then you have a parent-child bond that is broken. R. V. 13 P. 54.

3. The DCFS Regulations. Respondent Exhibit 4 entitled Client Service Planning, Section 305.90 Family-Child Visiting, is straight from the DCFS rules and procedure manual. Ms. Pratt stated that

Q. And what does 305.90 suggest to , I take it caseworkers in determining whether there should be visitation or not?

A. Well, it doesn't just suggest. It literally states that visitation is the most valuable means of maintaining family relationships when a child is in placement. R. V. 13 P. 56.

Ms. Pratt's personal experience also indicated the importance of visitation:

Q. If the parent is not allowed to visit or if the parent refuses to visit, how does it impact on the child?

A. Part of it depends on the developmental age of the

child. The younger the child is, because of the way the develop mentally, they still see themselves kind of the center of their universe and so they see themselves as very powerful. So, typically, when bad things happen to them, they assume that, somehow, that they have caused that; and even though we as adults may know that this is not a legitimate concern for the child, that doesn't mean that the child does not believe that. So when you have a child who, you know, one day is living with a parent and then, I mean, for all intents and purposes that parent disappears, what you have is a child who becomes emotionally disrupted. You have issues of trust. You have issues of abandonment. You have issues of damaged self-esteem. R. V. 13 P. 57-58.

Ms. Pratt stated that DCFS has a 14 day policy of when visits should be set after protective custody is taken, it's. DCFS utilizes weekly visits if the permanency goal is return home, which it was in this case. The rules don't change even though DCFS delegated its responsibilities to the Children's Foundation. R. V. 13 P. 63.

You also give visitation to get the parent involved in the planning of the visit; it is the "vehicle for healing" for the parent. The parent has failed in a major life responsibility, and they have lost control of their child. With visitation the parent becomes involved in the reunification process, so the parent gets to work thru their grief. The social worker "is not just a child worker, they are a family worker". That is the reason for procedure 305.90, page 2 (d).

Ms. Pratt acknowledged that visits need to be supervised in sex abuse cases so they are safe for the child. R. V. 13 P. 64-65. That's why DCFS has Appendix K - Child Endangerment Risk Assessment - Respondent's Exhibit # 5. Appendix K lists the ways we make sure the child is safe during a visit. Based on her review of all the discovery in the case, there was never any indication to Ann Pratt that Deborah Britt

ever threatened her child. R. V. 13 P. 66.

Respondent's Exhibit # 6 is Rule Section 305.50 - Service Plan, another procedure promulgated by DCFS. This is the crux of how the Department tries to get reunification to occur. It contains a visitation plan. Respondent's Exhibit 8 is a portion of the service plan - visitation plan. It is attached in every DCFS case where a child is in foster care. This case was unusual because mom is supposed to get at least weekly visits; it can be more frequent. R. V. 13 P. 67-69. Even during the time of Judge Caisley's "no visitation" order in the criminal case, there had been a psychological evaluation from Veliz and Dellorto performed at the Department's request that recommended that visits should occur; that should have been brought to the court's attention. In any event, the ban should have been lifted earlier. R. V. 13 P. 70-71. And once visits begin they should increase in length. Visits provide contact and an emotional relationship; the child sees that the parent is safe and vice versa. The parent can give the child permission to be happy in placement. R. V. 13 P. 72. The parent may be learning parenting skills and has an opportunity to practice those on visits. Visits also need to increase so that the parent is empowered to take more responsibility; take the child shopping, go to a school program. R. V. 13 P. 73.

Ms. Pratt then discussed the theory behind Respondent's Exhibit # 7, which dealt with Placement and Visitation Services, and comes from DCFS Rule 301 Subpart B.

**"It actually pulls off the research, the correlation between the regular parent visitation and continuing with the child**

and how that affects discharge and the outcome and return home, and it talks about the fact it's to be established. In fact, good child welfare practice is when the child is removed or as soon thereafter that you establish a visitation plan. That's both for the sake of the child and the sake of the parent to reduce anxiety. And if you have an emergency placement, within 10 days the visitation plan is supposed to be established. And, I 72 mean the Department's rule is clearly that visitation is supposed to begin immediately, and that's because they don't want this bond to be broken between the child, and they don't want the emotional issues that occur when visitation does not happen". R. V. 13 P. 71-72. (emphasis added).

Respondent's Exhibit # 9 is Placement and Visitation Services, Subpart C, The Foster Care Placement Goal from Rule 301 subpart C of the DCFS Rules and Procedures Manual. It talks about how there needs to be service planning in relation to visitation and the return home goal. The Department is to insure that parental visitation with children is to be arranged and scheduled in compliance with service plan rules and procedures. Respondent's Exhibit # 10 is Client Service Plan, Appendix H - The Parent Child Visit Planning Critical Decisions and Documentation Protocol; Appendix H of Procedure 305 of DCFS Rules and Procedures. Certain decisions are to be documented on the visitation plan, especially variations from the weekly visitation schedule. If you are going to delay the initial visit, you should request that at the shelter care hearing and document the reasons for that. That never happened in this case. R. V. 13 P. 73-75.

4. The Social Science Research. Here it is important to take a quick look at the articles that summarize the research that Ann Pratt was referring to. Even

Diane Horner was familiar with the publication *Child Welfare* and recognized it as authoritative in this field.

Respondent's Exhibit 1A was entitled *Behavior Correlates of Parental Visitation During Family Foster Care* by Cantos, Gries and Slis, from *Child Welfare* Vol. LXXVI, #2, March-April 1997. What follows are quotes or paraphrases from the article with the page that the quote or paraphrase appears on. The full text of the articles are found in the appendix to this brief.

309 "Those children who were visited more frequently were found to exhibit fewer externalizing and internalizing behavior problems than those visited less frequently or not at all".

310 cites to other articles reaching similar conclusions. "...experience and research have established beyond further question that parental visiting of placed children is essential to the resolution of the problems that led to placement."

312 Frequent visitation children showed greater gains in non-verbal IQ scores.

324 "The children who were visited regularly were rated as exhibiting fewer behavioral problems, especially problems of an internalizing nature (i.e. withdrawal, depression, anxiety) than the children who were visited irregularly or not at all".

326 Acknowledges the fact that foster parents note behavior deteriorations after parents visit, and that this is normal, and can be addressed in counseling for both the parent to help the child and for the child to understand their feelings.

Respondent's Exhibit 1B was entitled *Factors Influencing the Prospect of Children Returning to Their Parents from Out-of Home Care* by Tan and Ho, from *Child Welfare* Vol. LXXV, # 3 May-June, 1996.

264 "We join other researchers (citations omitted) in highlighting the paramount importance of parental contact to the child's prospect of returning home. We have, however, adopted a concept of parental involvement that is broader than parental

contact ...”<sup>11</sup>

**Respondent’s Exhibit 1C was entitled Parental Visiting and Foster Placement by Edmund Mech, PhD., ACSW professor at the University of Illinois Urbana-Champaign, from Child Welfare Vol. LXIV, Number 1, Jan -Feb 1985.**

**67 “This analysis of the relationship between parental visiting and the length of time children spend in foster care, controlling for race-ethnicity and geographic region, adds further importance to parental visiting for achieving permanency for children in foster care.”**

**68 “Accumulating evidence indicates that contact with children in placement by principal child rearing persons can be an important influence on how long children remain in care and whether or not they return home”.**

**Respondent’s Exhibit 1D was entitled A Study of 185 Foster children 5 Years After Placement by Lawder, Poulin and Andrews Child Welfare Vol. LXV, Number 3, May -June 1986.**

**244 “The strongest predictor of discharge (from foster care) was the parental visiting pattern. Children who were visited regularly by their parents were more likely to be discharged than those visited irregularly or not at all”.**

**Respondent’s Exhibit 1 E was entitled Keeping in Touch: Ecological Factors Related to Foster Care Visitation by Oyserman and Benbenishty from Child and Adolescent Social work Journal, volume 9, Number 6, December, 1992.**

**541 “If children are to return home, however, their emotional connection to their**

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See DCFS Regulation 305.90 - Family Child Visiting, Resp Exh 4, b) Parental Involvement in the Planning Process, and then one can understand where the author’s reference to a concept of parental involvement that is broader than parental contact is coming from.

biological parents must be promoted. One important way to do this is via mutual visitation during the child's stay in foster care. The importance of visitation has been acknowledged in the foster care literature". "Visitation frequency has been correlated with child and parent emotional well-being".

542 "More recent work continues to suggest that agency policy and the efforts of individual social workers influence extent of visitation".

547 "More frequent contact, whether telephone contact, parental or home visit was positively related to the workers' sense that the parent-child contact contributed to the child, that the impact of contact was positive, and that visitation frequency should be maintained".

Respondent's Exhibit 1F was entitled Case and Context: Determinants of Planned Visit Frequency In Foster Family Care by Peg Hess, from Child Welfare Vol. LXVII, Number 4, July -August, 1988.

311 "Experience and research have established beyond any further question that parental visiting of placed children is essential to the resolution of the function of placement in each family's problem".

315 "The caseworkers in the public agency with a written policy stressed its influence on visit frequency. One commented: That policy makes a lot of difference. It forces us to look at some parents we don't want to look at... If that policy wasn't there, the visit could be once a month. Another reflected: It's pretty set, that hourly visit once a week. You might not want to do it or like it, but you do it".

321 "They (caseworkers) emphasized that visits help children know they have not been deserted or rejected and give them hope that they may return home, reassure the parent that the child is safe and will be returned home, and affect the placement outcome. Several caseworkers emphasized that visits may motivate parents and reward effort and progress".

"For parents to be motivated to get their children back, they have to have the visits, to see the reality of the whole thing, to try out whatever new skills they've learned. They won't even take parenting classes if they're not going to see their kids. There's no point to it as far as they're concerned. In terms of getting the child home, that's the only way you're going to do it". (emphasis added by bold).

## 5. Case Law on Frustration of Visitation in the Context of a Parental Rights

Termination Proceeding. In *Davis v. Bughdadi*, 120 Ill.App.3d. 236, 458 N.E.2d. 177, 76 Ill.Dec. 38 (1983) the Fifth District held that hindrance of visitation is a significant element in deciding a parental termination case. Here the parents of a child divorced, dad failed to pay much in the way of support and mom remarried. She made it difficult for the father to visit his child and then tried to terminate his parental rights. The Appellate Court found that

The fact that a custodial parent denies or hinders the visitation rights of a non-custodial parent may be a significant element weighing against the clear and convincing determination of the non-custodial parent's indifference to his or her child. 458 N.E. 2d. @ 181.

Similar to *Davis*, is *Perkins v. Breitbarth*, 99 Ill.App.3d. 135, 424 N.E.2d. 1361 (1981). Here young, unmarried parents discover they are incompatible. The dad headed off to the military; mom found a new boyfriend who married her. The dad provided some support but was rebuffed when he tried to visit his child. The appellate court found that the dad made reasonable efforts to visit which were frustrated by lack of cooperation from the mother. That negated any finding of unfitness.

In *Re Hoback*, 95 Ill.App.3d. 169, 419 N.E.2d. 713 (4th Dist., 1981) this Court reversed a termination based on reasonable progress and reasonable efforts where DCFS allowed visits but established goals that were "dependent upon factors outside of respondent's control". 419 N.E. 2d. @ 715-716. The Court went on to conclude that:

... it can hardly be said that the State has established by



**clear and convincing evidence that the agency through the formulation of goals attempted to encourage and strengthen the parental relationship, or that respondent failed to plan for the child's future. 419 N.E. 2d. @ 716.**

One thing clearly not in Deb Britt's power was the duration of the Niebur/Bienz sex therapy mixed group treatment. Mr. Niebur said the average amount of time was 2 - 3 years. R. V. 13, P. 142.

In *Regan v. Joseph P. et,al*, 286 Ill.App.3d 889, 677 N.E.2d 434, 222 Ill.Dec. 231 (1997) another mother with a new husband tried to make it difficult for the father of the child to visit. Here, orders of protection were the tool to frustrate visits. Citing from *In re Overton*, 21 Ill.App.3d 1014, 316 N.E.2d 201 (1974) the Court reversed the trial court's finding of unfitness:

**In Overton, a mother was prevented from maintaining contact with her children due to interference from a Department of Children and Family Services (DCFS) caseworker. The caseworker did not expressly refuse her the right to see her children, but did not encourage her to see them, as he felt it was in their best interest that she not visit them. For the good of her children, the mother obeyed the caseworker's communications. The court noted, inter alia, that if the mother did not visit her children the DCFS was willing to and did file a petition alleging that she did not show reasonable interest in them; yet, if she insisted upon seeing her children, the caseworker may not have recommended the return of the children to her. Under these circumstances, the court found that the caseworker's conduct insured that once the mother was separated from her children, she would eventually lose them permanently. 677 N.E.2d. @ 437. (emphasis added by bold).**

Two comments are important here. The State's witnesses insisted that visits

for Deb Britt were not in the child's best interests, but never articulated any reason for that; certainly none that were recognized in Respondent's Exhibit 5 - Client Service Planning - Appendix K - Child Endangerment Risk Assessment, which is the rule developed by the Department to assess that risk. No one mentioned that physical danger to the child or risk of flight with the child was a factor in the decision making process. Second, the last part of the above quote tracks the social science articles mentioned above, that kids who are not visited don't return home.

5. Case Law on Whether an Agency Must Play by its Own Rules. Should DCFS have to play by their own rules? Aside from any sense of basic fairness that would require that to occur, we know that the failure to comply with a service plan (DCFS' rules for the parents) is a terminating offense. In re B.W 282 Ill.App.3d 680, 669 N.E.2d 365, 218 Ill.Dec. 422 (1996), In the Interest of L.L.S. 218 Ill.App.3d 444, 577 N.E.2d 1375, 160 Ill.Dec. 804 (4th Dist., 1991). There is also case law which would require DCFS to play by its own rules.

In *Stull v. The Department of Children and Family Services* 239 Ill.App.3d 325, 606 N.E.2d 786, 179 Ill.Dec. 954, 79 Ed. Law Rep. 980 (1992) the Court was faced with whether DCFS' failure to comply with rules setting time limits violated the rights of a teacher "indicated" for abuse to a student.

Furthermore, such rules as are lawfully adopted by an administrative agency pursuant to statutory authority have the force of law and bind the agency to them. (*Little v. Civil Service Comm'n* (1985), 131 Ill.App.3d 848, 851, 86 Ill.Dec. 947, 949, 476 N.E.2d 448, 450.) This is particularly true where the agency's noncompliance with its own rules

**prejudices one who is subject to the authority of the agency. 606 N.E.2d. @ 791. (emphasis added by bold).**

Based on the conclusions of the social science research previously cited, the total failure to give the mother visitation was outcome determinative; because Deb had received no visits, she wasn't going to get her child back. DCFS should not be allowed to get away with this behavior. See also *Central Illinois Public Service Company, v. Illinois Commerce Commission* 243 Ill.App.3d 421, 610 N.E.2d 1356, @ 1360 183 Ill.Dec. 112 (1993) "the Commission cannot violate the Act or its own rules"); (citations omitted) ("[h]aving once established rules pursuant to statutory authority, an administrative agency is bound by these rules and may not violate them"). *Schinkel, v. Board of Fire and Police Commission of the Village of Algonquin*, 262 Ill.App.3d 310, 634 N.E.2d 1212, 199 Ill.Dec. 858 (1994) "When a board errs by failing to adopt rules or by adopting rules and failing to observe them, the question in determining if the error was reversible is whether the error prejudiced the plaintiff and prevented him from receiving the fair and impartial hearing to which he is entitled by the Act." 634 N.E. 2d. @ 1218. *Springwood Associates v. Health Facilities Planning Board*, 269 Ill. App. 3d 944, 646 N.E.2d 1374, 207 Ill.Dec. 287 (4th Dist., 1995). "When an administrative agency has adopted rules and regulations under its statutory authority for carrying out its duties, the agency is bound by those rules and regulations and cannot arbitrarily disregard them". 646 N.E. 2d. @ 1376.

**II. Deborah Britt made “reasonable efforts” to correct the conditions that were the basis for removal of her child.**

**The standard of review utilized by the reviewing court pursuant to Il. S. Ct. R. 341 (e) (3) in petitions to terminate parental right cases is the trial court’s decision should not be disturbed on appeal unless against the manifest weight of the evidence. In Re Doolan, 101 Ill.App.3d. 322 @ 324, 427 N.E.2d 1348, 56 I.D. 802 (1981).**

**A. Deborah Britt made reasonable efforts to complete parenting classes, individual counseling and attend offender specific sex therapy.**

**1. Introduction. Considering her lot in life, Deborah Britt used reasonable**

efforts to correct the conditions which caused her child to come into care in the first place. In *In Re Doolan*, 101 Ill.App.3d. 322, 427 N.E.2d 1348, 56 I.D. 802 (1981), one of the bases for termination was whether the mother made reasonable efforts to correct the conditions which caused her child to come into care in the first place. “The question of what is a reasonable effort involves a subjective judgment based on the amount of effort which is reasonable for a particular person” ... 101 Ill.App.3d. @ 324.

2. The Dispositional Hearing. A dispositional hearing was held on July 11, 1995. Deborah Britt was in attendance, in the custody of the McLean County Sheriff, as she had admitted on June 29, in open court to have touched her child’s vagina. As a result she was serving time in the county jail. R. V. 6 P.3. The dispositional report noted that she had no known record of prior involvements with the court. C. 59. Information gathered for the report did not come from the mother; her attorney, James Tusek told her not to cooperate as that would put her in “harm’s way”. C. 62.

Other information on Ms. Britt revealed she had been diagnosed as manic-depressive, had been molested by her brother, grandfather, C. 63. and her current husband, was a high school graduate, and had suffered severe anxiety, major depression and post traumatic stress syndrome. C. 64. She was deemed to be “receptive to services in order to better manage her relationship with Jennifer”. The dispositional report also noted that Jennifer was shunned at daycare by the other kids, she used to sit in a corner and cry “my mommy loves me”. C. 65.

Mrs. Britt testified at the dispositional hearing. She had had no contact with

DCFS because her attorney Mr. Tusek told her not to do so. She has had no contacts with her child because she was still incarcerated. R. V. 6 P.6. Deb indicated that she intended to stay in counseling with Tom Niebur, as his services are useful. She wanted to visit with Jennifer and eventually wanted her back. R. V. 6 P. 7-8.

The Department filed in a Service Plan dated September 12, 1995. C. 121-173. It criticized Ms. Britt for not having done a psychological exam, although she had done one with Mary Dellorto and Jane Veliz at the Department's request. C. 123, 140-148.<sup>12</sup> That evaluation noted that Ms. Britt was attempting to obtain supervised visits with her daughter but DCFS refused to help her. C. 141. The evaluation made four recommendations; the last one was "Ms. Britt should be allowed supervised visitation with her daughter in order to maintain the parenting relationship".

Ms. Britt cooperated with an evaluation for sex therapy done by Thomas Niebur. That evaluation involved extensive psychological testing. The Hanson Sex Attitude Questionnaire revealed no distorted thinking regarding sex with children. The Carich-Adkerson Sex Offender Risk Assessment Scale indicates a low to moderate risk of sex offending. Low risk factors included, no criminal history, no sexual abuse history, no deviant fantasies, she was open and cooperative with no recent substance abuse history. Mr. Niebur recommended on-going long term

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On the typed document there is a handwritten note that the psychological was completed. C125. On the future cooperation goal the task of doing the psychological is lined out by hand. C. 131. Both of these notes were probably generated at the ACR at the request of the DCFS reviewer.

individual and group psychotherapy. C. 136-139.

3. The Permanency Review Hearing. The Permanency Review Hearing resumed June 6, 1996. Nancy Murrah of DCFS testified for the State. The Department wanted to change the goal from “return home” to “substitute care pending court decision”. R. V. 9 P.5. Ms. Murrah acknowledged that Deb was attending sex abuse counseling, but only sporadically because she couldn’t afford all the sessions. R. V. 9 P. 9. Ms. Murrah admitted that Ms. Britt had been asking for visits. R. V. 9 P. 10. Murrah noted in her report that Deb continues to cooperate with services through the CF. She had received no visits yet but “they may become appropriate in the future”. C. 295. Deborah Britt also testified at this hearing that she had been asking for visits with her child from the Department, but had never received one visit. R. V. 9 P. 15.

4. The Petition to Terminate Parental Rights Hearing. A petition to terminate parental rights was filed in by the State on August 5, 1996. C. 315. Doris Bienz testified first for the State. R. V. 13 P. 2-37. She was and is employed at Bromenn Counseling since 1988 and cofacilitates 3 sex offender groups and 3 domestic violence groups. R. V. 13 P. 3. Deborah Britt was a member of a sex offender group that she co-facilitates since April 18, 1996 and was still in that group as of her testimony. The group meets weekly for 80 minutes. Her partner, Tom Niebur did Ms. Britt’s sex offender evaluation, recommending that she go to group

counseling. R. V. 13 P. 16. "She was fairly open and she participated like from the beginning", referring to Deb Britt. R. V. 13 P. 17. Deb acknowledged in a group session that she abused her daughter on June 10, 1996, less than two months after she was in group. R. V. 13 P. 18. Ms. Britt attended 46 of the 51 sessions scheduled. R. V. 13 P. 20.

Tom Niebur also commented about Deb's efforts early in the process.

Q. Okay. And did you see her at regular intervals between August of '95 and February of '96?

A. Well, I can give you -- she was restricted initially because of finances. She was -- in fact, at one of the sessions we had scheduled, she was falling behind in payments and she had come to the next session without payment, and I did not see her that particular time until she could get better caught up. R. V. 13 P. 123.

They met 7 of 9 times; she was absent once, and without money once. She then began the new weekly mixed (male and female) group with Tom & Doris Bienz. She attended the mixed group 46 of 51 times. She admitted in group on June 10, 1996 that she perpetrated on her daughter. She was taking medication for her depression at the time of the offense and her marriage was very stressful. R. V. 13 P. 124-125.

On cross Mr. Niebur stated that Deb personally paid for him from the outset. Frequently DCFS pays the bill, but even when he noted she couldn't pay, he never called the caseworker to see if the Department would fund her treatment. R. V. 13 P. 134. Mr. Niebur opined that Deb was not predisposed to abuse children. He acknowledged that she was very pessimistic about the possibility of getting a visit



from the social workers, R. V. 13 P. 140 and admitted that:

**Q. Okay. Now, you mentioned, first of all, the criteria for visitation. were these criteria articulated to Deb Britt at some point in time?**

**A. No. ...**

**Q. Do you think, in looking back, it would have made sense for the specific criteria that Deb would have to meet that you believe are important for visits that she knew exactly what she needed to do?**

**A. Absolutely. R. V. 13 P. 137, 139.**

There was a 3 month break after the assessment and before counseling. One of the problems is that Deb ran out of money, that limited the number of individual sessions she could have. It would be rare to have a reunification without a year of treatment. The average is 2 - 3 years of treatment. Deb Britt had no problem regarding deviant impulse management. R. V. 13 P. 140-143. She did accept responsibility for the abuse. Deb was successful in understanding the impact of the abuse. R. V. 13 P. 146-7. Tom Niebur, the State's expert sex therapist, opined that Deborah Britt used reasonable efforts since her assessment began in February of 1995. R. V. 13 P. 165.

Todd Smith also testified for the State. Mr. Smith is employed at the McLean County Center for Human Services (CHS) as day treatment coordinator. He is degreed with a B.S. in psychology and M.S. counseling psychology, both from Illinois State University. He has been employed at CHS since May of 1990. In August of 1995 he was an outpatient therapist, and was Deb Britt's counselor. From August 25, 1995 until September 25, 1996 they met every week for 50 minutes as the

result of a court referral and charge of sexual abuse. She paid for the sessions herself R. V. 14 P. 21-23, 30. Deb told him in August or September of 1996 that she was convicted of the sex offense and that the abuse indeed happened. Her therapy ended in September of 1996 when she ran out of money to pay for her counseling. When it ended he recommended that she continue with the mixed sex group at Bromenn. "And since money was a factor in attending the individual sessions, it would have -- my recommendations also would have been for her to continue individual therapy, but the money was not available for her to continue that". She signed releases to DCFS and the Children's Foundation. R. V. 14 P. 30, 33-34.

On cross Mr. Smith acknowledged that her stay in jail may have interfered with her attendance, as she made 22 of 40 counseling appointments. R. V. 14 P. 33-34. He admitted that sometimes DCFS pays for counseling for their clients when people are homeless. He knew that during this time frame that Deb said she was homeless and moved around frequently. R. V. 14 P. 35.

Of the cases cited in Section I. A. supra Clarence T.B., A.H., C.R., Doolan, Hoback, and S.G., are also "reasonable efforts" cases. Respondent readopts those cases and the argument contained therein here as well.

B. DCFS Regulations so overwhelmingly favor visitation between parent and child in foster care that respondent mother could not have made reasonable efforts where DCFS ignored those regulations and never afforded her a single visit since the

**shelter care hearing.**

**Respondent readopts those cases and the argument contained Section I. B. supra here as well.**

## **CONCLUSION**

**Based on the reasonable progress made by Deborah Britt, and the reasonable efforts expended by her, she asks that the decision of the trial court as to unfitness**

**be reversed. If this court finds that either her progress or efforts were not reasonable, then based on the agency failing to comply with its own regulations, Deborah Britt asks that her lack of progress or efforts be excused as they were frustrated by DCFS.**

**In any event she asks that this case be remanded to the trial court so that her child can be told the truth by a caseworker and a counselor who both understand the meaning of the DCFS visitation regulations and what “return home” really means. It’s time to plan for a return home to this mother.**

**Respectfully submitted**

**Deborah Britt**

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**One of her attorneys**

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### Social Work Journal Articles

Behavior Correlates of Parental Visitation During Family Foster Care by Cantos, Gries and Slis, from Child Welfare Vol. LXXVI, #2, March-April 1997. P.

Factors Influencing the Prospect of Children Returning to Their Parents from Out-of-Home Care by Tan and Ho, from Child Welfare Vol. LXXV, # 3 May-June, 1996. P.

Parental Visitation and Foster Placement by Edmund Mech, PhD., ACSW professor at the University of Illinois Urbana-Champaign, from Child Welfare Vol. LXIV, Number 1, Jan -Feb 1985. P.

A Study of 185 Foster children 5 Years After Placement by Lawder, Poulin and Andrews Child Welfare Vol. LXV, Number 3, May -June 1986. P.

Keeping in Touch: Ecological Factors Related to Foster Care Visitation by Oyserman and Benbenishty from Child and Adolescent Social work Journal, volume 9,

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