IN THE MICHIGAN SUPREME COURT
Appeal from the Michigan Court of Appeals
Talbot, P.J., and Markey and Riordan, JJ.

IN THE MATTER OF IN RE COH, ERH, JRG, KBH, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner/Intervening
Respondent-Appellant,

Lower Court No. 08-036989-NA
Court of Appeals No.: 309161

vs.

KATHLEEN BOLDUC, RICHARD BELLEW, JOSEPH BRADEN HEEREN,

Respondents,

Supreme Court No.: 147515

vs.

LORI SCRIBNER,

Intervening Petitioner for
Guardianship-Appellee.

BRIEF OF *AMICI CURIAE* LEGAL SERVICES ASSOCIATION OF MICHIGAN AND MICHIGAN STATE PLANNING BODY FOR THE DELIVERY OF LEGAL SERVICES TO THE POOR

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QUESTION PRESENTED

At the time of the children's placement determination, MCL 722.954a and MCR 3.965 required the Department of Human Services ("DHS") and the trial court to identify, locate and consult with relatives to determine whether an appropriate relative placement existed for the children who had been removed from their home. Here, DHS failed to fulfill its statutory obligations under MCL 722.954a, which may have resulted in the children being placed in a stranger's foster home rather than with a relative. Then, the trial court denied the relative's request to have guardianship over the children, stating that, among other things, the children had been living with the foster parents for a significant length of time. Did the trial court violate MCL 722.954a and MCR 3.965 when it failed to enforce DHS' obligation to seek out relatives?[1]

Amici: Yes.

[1] In this Court's Order dated October 2, 2013, the Court asked whether the Court of Appeals erred by reversing the circuit court on any legal basis. See question (5). Our brief addresses this question.

STATEMENT OF INTEREST OF *AMICI*

The *amicus curiae* listed below are filing this brief to emphasize that DHS and trial courts must proactively seek to place children with a relative early in a child welfare case and to conduct a full relative placement investigation at the time the children are removed from the parent's care. Such a thorough practice serves the best interest of children in Michigan and likely reduces the chances of a termination of parental rights, which benefits Michigan families and the goal of reunification that is inherent in our child welfare system.

Because low income families are over-represented in the child protection system, this procedure is vital to these families and to counter any possible bias that DHS or Michigan trial courts may hold against lower income relatives for placement, especially where placement with a middle-income or high-income non-relative foster parent is possible. Thus, the *amicus curiae* ask the Court to fully articulate and underscore the requirements surrounding the procedures that DHS and trial courts must follow to comply with the preference for relative placement as stated under Michigan law.

The Legal Services Association of Michigan ("LSAM") is a Michigan non-profit organization incorporated in 1982. LSAM's members are the thirteen largest civil legal services organizations in Michigan and collectively provide legal services to low-income individuals and families in over 50,000 cases per year.[2] LSAM members have broad experience with all aspects of the child protection system and a deep institutional commitment to ensuring that low-income families—parents and children—are treated fairly in that system. Several LSAM members have

[2] LSAM's members are: the Center for Civil Justice, Elder Law of Michigan, Lakeshore Legal Aid, Legal Aid and Defender, Legal Aid of Western Michigan, Legal Services of Eastern Michigan, Legal Services of Northern Michigan, Legal Services of South Central Michigan, Michigan Indian Legal Services, Michigan Migrant Legal Assistance Program, Michigan Legal Services, Neighborhood Legal Services, and the University of Michigan Clinical Law Program.

contracts to directly represent parents and children in child protection cases. In addition, other LSAM members take such cases for free on a case-by-case basis. Almost all LSAM members work daily—e.g., in public benefits, family law, and housing cases—with families that are involved in and impacted by the child protection system. And all LSAM members are institutionally interested in and committed to providing fair and equal access to the courts system for low-income persons.

The Michigan State Planning Body ("MSPB") is an unincorporated association of about forty individuals — from the legal services community, judiciary, private bar, and community organizations providing services to low-income persons — and MSPB acts as a forum for planning and coordination of the State's efforts to deliver civil and criminal legal services to the poor. The MSPB was initially created through a mandate of the federal Legal Services Corporation ("LSC"). Although LSC no longer requires that states have a formally designated State Planning Body, the MSPB has continued to function at the request of the programs and their state funder.

Amici are concerned that DHS and Michigan trial courts are not fulfilling the statutory-based preference for relative placement early in a child welfare case. Because low-income persons are more often involved in the child welfare system, *amici* are particularly concerned that low-income persons are most greatly affected by this noncompliance with Michigan law. If left unchanged, the practice of DHS and Michigan trial courts in not fully exploring relative placement will ultimately not serve the best interest of Michigan children and impede efforts toward reunification of Michigan families. Therefore, as in several recent landmark cases, *amici*

request that the Court articulate clear standards and procedures that DHS and trial courts must follow to protect the preference for relative placement early in a child welfare case.

I. INTRODUCTION

When the children were removed from their home in February, 2008, MCL 722.954a read: "Upon removal, as part of a child's initial case service plan . . . the supervising agency ***shall***, within 30 days, ***identify, locate, and consult with relatives*** to determine placement with a fit and appropriate relative who would meet the child's developmental, emotional, and physical needs as an alternative to foster care." MCL 722.954a, 1997 PA 172 § 4a(2) (emphasis added) (amended by 2010 PA 265). It is the burden of the Department of Human Services ("DHS") to reach out to relatives (specifically, to identify, locate, and consult with a relative) – not the burden of a child's relative –to determine if a relative placement is possible.[3]

DHS' obligation to reach out to a child's relatives initially is even more crucial because of DHS' goal of minimizing the number of placements for a child. *See* DHS' Children's Foster Care Manual, Foster Care – Placement FOM 722-3, 4-1-2013 ("FOM 2013") at 3 ("placement selection must be made to minimize the number of placements for the child. Whenever possible,

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[3] Currently, the statute imposes an even greater burden on DHS: "Upon removal, as part of a child's initial case service plan . . . the supervising agency ***shall***, within 30 days, ***identify, locate, notify, and consult with relatives*** to determine placement with a fit and appropriate relative who would meet the child's developmental, emotional, and physical needs." MCL 722.954a , 2010 PA 265 (emphasis added). In order to properly notify relatives, DHS must: "(a) [s]pecify that the child has been removed from the custody of the child's parent[;] (b) [e]xplain the options the relative has to participate in the care and placement of the child, including any option that may be lost by failing to respond to the notification[;] (c) [d]escribe the requirements and benefits, including the amount of monetary benefits, of becoming a licensed foster family home[; and] (d) [d]escribe how the relative may subsequently enter into an agreement with the department for guardianship assistance." *Id.* In addition, the statute specifies that "[b]efore determining placement of a child in its care, a supervising agency ***shall give special consideration and preference to a child's relative or relatives*** who are willing to care for the child, are fit to do so, and would meet the child's developmental, emotional, and physical needs." *Id.*

the initial placement should become the ongoing placement for the child with the potential for permanency if needed."). Once a child is placed with a non-relative initially, there are new considerations (i.e. minimizing the number of placements) that weigh against changing the child's placement to a relative placement. As a result, it is vital for DHS and Michigan trial courts to fully explore potential relative placements early, before other considerations arise, because such a placement may serve the child's best interest and may reduce the likelihood of a termination of parental rights, furthering the goal of reunification of Michigan families.

Amici write to emphasize that DHS must not side-step this important statutorily-required relative placement inquiry. Without such an inquiry, placement determinations could lead to more instability and disruption in a child's life, where, as is likely the case here, an uninformed relative who was never consulted initially by DHS expresses an interest in a child's placement later in a case and, thereafter, causes much litigation which affects the placement and stability of the children, ***all of which may have been avoided if DHS had reached out to and informed the relative about the children's placement determination earlier as required by statute.***

Amici, therefore, ask the Court to respond to this situation as it has in other recent landmark child welfare cases – to articulate important standards for DHS, trial courts – and to reinforce the preference for relative placement as required by Michigan statutes. See e.g., *In re Morris*, 491 Mich 81; 815 NW 2d 62 (2012); *In re Mason*, 486 Mich 142; 782 NW 2d 747 (2010); *In re Rood*, 483 Mich 73; 763 NW 2d 587 (2009).

In *In re Morris*, for instance, this Court clarified the standard for triggering the notice requirement under the Indian Child Welfare Act ("ICWA") providing detailed guidance for DHS and Michigan trial courts. In announcing this standard, the Court stated that "sufficiently reliable

information of virtually any criteria on which membership might be based is adequate to trigger the notice requirement" and it further articulated a nonexhaustive list of indicia. 491 Mich at 108, n. 18. The Court further reasoned, in part, that the burden on trial courts and DHS to comply with the notice requirement ***is minimal when compared to the potential costs of erroneously failing to send notice***. *Id.* at 107-108. In addition, "[t]o maintain ***stability in placements*** of children in juvenile proceedings, it is preferable to err on the side of giving notice and ***examining thoroughly*** whether the juvenile is an Indian child." *Id.* at 109 (internal quotations omitted) (emphasis added).

In *In re Mason* and *In re Rood*, two other leading child welfare cases in Michigan, the Court specifically enforced state statutes and provided guidance to DHS and Michigan trial courts on how to comply with such rules. In *In re Mason,* the Court acknowledged that DHS had failed in its duties to engage the incarcerated father in the proceedings against him, which was required by court rule, and failed to involve the father in reunification processes and to provide him with services pursuant to a service plan, as required by statute. 486 Mich at 146. Thereafter, the Court set forth the requirements of the court rules and statutes and indicated the actions that DHS and trial courts must take to comply with Michigan law. *Id.* at 152-160. The Court found that the state's conduct was clearly erroneous by failing to involve or evaluate the father and then terminating his parental rights based in part of his failure to comply with the service plan. *Id.* at 159. Likewise, in *In re Rood,* the Court ruled that the trial court's and DHS' efforts to notify and involve the father in the proceeding did not meet the requirements of the court rules and statutes and that the father was not afforded due process; the trial court clearly erred by ruling that the father was responsible for his own lack of participation and did not excuse the state's failures to inform him of the ongoing proceedings. 483 Mich at 107, 116-117.

In each of these cases, the Court noted that strict compliance with legal requirements at the outset of a child protection proceeding was essential to assuring fair proceedings, protecting children, and avoiding protracted proceedings.

In this case, the Court should approach the issue of a preference for relative placement and the inquiry surrounding relative placement in the same manner as it did in *In re Morris, In re Mason,* and *In re Rood.* That is, the Court should provide thorough guidance for DHS and Michigan trial courts regarding what is required to comply with the preference for relative placement and the inquiry regarding relative placement under Michigan law. The Court should hold that DHS and the trial court did not adequately comply with the relative inquiry as required by MCL 722.954a and MCR 3.965 before making its placement determination. This matter should be remanded to the trial court to determine whether placement with Ms. Lori Scribner, the paternal grandmother (of three of the children), would meet the children's development, emotional and physical needs consistent with MCL 722.954a. This relief is necessary in this case because the agency violated the statutory provision.

II. ARGUMENT

A. DHS Must Proactively Seek Relative Placement Upon Removal of a Child.

DHS must proactively and diligently seek relative placement upon removal of a child from his or her home, as required by Michigan statute, the DHS manual, and federal law. See *In re McBride,* 483 Mich 1095, 1105, nt. 19; 766 NW 2d 857 (2009) (citing MCL 722.954a for DHS' statutory duty to 'identify, locate, and consult with relatives to determine placement with a fit and appropriate relative' and citing MCR 3.965 for the proposition that "at the preliminary

hearing, the court 'shall direct' the DHS to identify and consult with relatives pursuant to MCL 722.954a(2)"); *In re Rood,* 483 Mich at 96.

Under the 2008 version of MCL 722.954a, DHS was required to (i.e. "shall") identify, locate, and consult with relatives to determine the placement of a child within 30 days of removal to determine if a relative placement was available. MCL 722.954a, 1997 PA 172 § 4a(2) (emphasis added) (amended by 2010 PA 265); see also *In re Rood,* 483 Mich at 96. The later version of the statute adds that DHS "***shall***, within 30 days, ***identify, locate, notify, and consult with relatives*** to determine placement with a fit and appropriate relative . . ." MCL 722.954a, 2010 PA 265 (emphasis added). The statute further specifies notice requirements for relatives and explicitly states that DHS "***shall give special consideration and preference to a child's relative or relatives"*** in making the placement decision. *Id.*

Michigan trial courts are also obligated, pursuant to court rule, to ensure that DHS considers relative placement after a petition against a parent has been filed. Under MCR 3.965(B)(13), at the preliminary hearing on a petition, "[t]he court must inquire of the parent, guardian, or legal custodian regarding the identity of relatives of the child who might be available to provide care."[4] In addition, if a placement is ordered at a preliminary hearing, DHS must create an initial service plan and "[t]he court shall direct the agency to identify, locate, and consult with relatives to determine if placement with a relative would be in the child's best interests, as required by MCL 722.954a(2)." MCR 3.965(D).

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[4] Which was in effect prior to 2008.

DHS' own manual from 2008 describes DHS' specific obligations toward relatives in considering relative placements for children. DHS' Children's Foster Care Manual 722-3, 04-01-2008 ("FOM 2008"). "The parent and the foster care worker must discuss all possible options such as placement with relatives, licensing of . . . relatives to serve as foster parents, or other known options." FOM 2008 at 1. "The following criteria must be evaluated when making a placement . . . When out of home placement is necessary, relative placements should be evaluated immediately based upon the needs of the child and the relative placement's potential for facilitating the goal of return home if that is the plan." *Id.* at 3. Although DHS' manual states that "[t]he placement should be in proximity to the child's family to facilitate parenting time," there is an "[e]xception [for] [r]elative care placements: If the family agrees and a relative home is not in the county, or in the state, pursue this placement option immediately." *Id.* at 3.[5] The DHS manual further states the procedure that DHS must undertake to determine whether relative placement is possible: "MCL 722.954a.(2) requires the supervising agency, (whether DHS or a private child-placing agency) as part of the ISP, to identify and locate all relatives for possible placement of the child within their home within 30 days of the child's placement. In this process, the worker is to:

- Discuss the options for relative placement with the parent(s) and child(ren), if appropriate. The parent's and child's placement preference must be documented in the DHS-197, Relative/Unrelated Caregiver/Guardian Home Study [].

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[5] The 2013 Children's Foster Care Manual adds that: "When children must be removed from their home and placed in out-of-home care, preference must be given to placement with a fit and willing relative." FOM 2013 at 3. "Therefore, it is crucial to identify relatives prior to removal (CPS) and throughout the case (foster care) as potential placements and permanency providers . . . ." *Id.*

- Obtain sufficient contact information (names, addresses, phone numbers) to be able to contact relatives for possible placement.
- Ask each parent and child to identify all relatives including siblings related to the child(ren) by blood, marriage or adoption. (Refer to CFF 721 for the legal definition of relative). If siblings are involved, refer to Placement with Siblings and Newborn Sibling Placement in this section. Obtain agreement from the parent(s) and the extended family for a particular relative to care for the child(ren), if possible. Complete a criminal history and central registry check on all household members.
- Proceed with the home study process for all identified relatives that have acceptable criminal history and central registry clearances on all of the household members." *Id.* at 6-7.[6]

The Michigan statutes, court rules, and DHS manual are related to the federal law, the Fostering Connections to Success and Increasing Adoptions Act of 2008, which requires states to comply with certain obligations in placing children in the state's child welfare system in return for funding from the federal government. Specifically, the state must "consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards[.]" 42 USC § 671(a)(19). Under the 2008 amendment, the federal law also provides:

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[6] Note that DHS' April, 2012 Foster Care Manual 722-6 further includes a detailed section regarding relative notification for placement decisions, including that "the state must exercise due diligence to identify and provide notice that a child is in foster care to all adult relatives, including: maternal and paternal grandparents . . . ." *Amici* have been unable to locate a copy of FOM 722-6 from 2008 on the DHS website.

> "within 30 days after the removal of a child from the custody of the parent or parents of the child, the state shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence, that-- **(A)** specifies that the child has been or is being removed from the custody of the parent or parents of the child; **(B)** explains the options the relative has under Federal, State, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice; **(C)** describes the requirements under paragraph (10) of this subsection to become a foster family home and the additional services and supports that are available for children placed in such a home; and **(D)** if the State has elected the option to make kinship guardianship assistance payments under paragraph (28) of this subsection, describes how the relative guardian of the child may subsequently enter into an agreement with the State under section 678(d) of this title to receive the payments[.]" [42 USC § 671(a)(29), Pub L 110-351.]

In sum, DHS and Michigan trial courts were obligated in 2008, and are obligated today, to reach out to relatives within 30 days of the removal of children and to consider placement with such relatives before making a placement determination.

B. DHS' Thorough Exploration of Relative Placement Before Making a Placement Determination for a Child Is Important to Michigan Families.

DHS' exploration of relative placement before making a placement determination for a child is important in order to serve the best interests of children in Michigan and to reduce the likelihood of a termination of parental rights, which may benefit reunification efforts for Michigan families.

1. Relative Placements Benefit Children.

Social science data shows that relative placement is important in order to serve the best interests of children.[7] "[I]t is widely accepted through child welfare research, dating back to the

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[7] Approximately 500,000 children in out-of-home care live with kin. Margaux Holbert, MSW, *Focus- Kinship – The best interest for children or a foster care alternative,* FOSTERING FAMILIES TODAY, March/April 2010 at 22 (citing Child Welfare League of America). In 2007,

1991 National Commission on Family Foster Care [] that kinship care can help maintain family ties, reduce the trauma of separation, and provide[] continuity within community and cultural contexts." Margaux Holbert, MSW, *Focus- Kinship – The best interest for children or a foster care alternative,* FOSTERING FAMILIES TODAY, March/April 2010 at 1, *available at* http://www.nrcpfc.org/is/kinship-relative-care.html; see also Cynthia Andrews Scarcella *et al.*, *Identifying and Addressing the Needs of Children in Grandparent Care*, THE URBAN INSTITUTE, 2003 at 1, *available at* http://www.urban.org/uploadedpdf/310842_B- 55.pdf (relative foster placements may be beneficial as they "may minimize trauma by providing the child with a sense of family support.").

In fact, "children [who were] placed into kinship care had fewer behavioral problems 3 years after placement than children who were placed into foster care." Davis M. Rubin *et al., Impact of Kinship Care on Behavioral Well-being for Children in Out-of-Home Care*, 162 ARCH PEDIATR ADOLESC MED NO. 6, 2008, *available at* http://archpedi.jamanetwork.com/article.aspx?articleid=379638. The researchers concluded that "[t]his finding supports efforts to maximize placement of children with willing and available kin when they enter out-of-home care." *Id.* According to a cohort study between children in kinship care and children in foster care, the study found that "children in kinship care experienced as good or better outcomes than did children in foster care. For example, children in kinship care

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2.4 million grandparents in the United States reported they were responsible for their grandchildren living with them. See AARP, *et al.*, *State fact sheets for grandparents and other relatives raising grandchildren*, 2007, *available at* http://www.grandfactsheets.org/state_fact_sheets.cfm. In July of 2006, 70,044 grandparents in Michigan reported that they were responsible for their grandchildren living with them. AARP, *et al.*, *Michigan, A state fact sheet for grandparents and other relatives raising children,* July 2006, *available at* http://assets.aarp.org/rgcenter/general/kinship_care_2006_mi.pdf.

had significantly fewer placements . . . ." Marc Winokur *et al., Child Welfare Outcomes in Colorado: A Matched Comparison between Children in Kinship and Foster Case*, February 2006, *available at* http://www.ssw.chhs.colostate.edu/research/swrc/files/KinshipCareOutcomeStudy.pdf.

The Center for Law and Social Policy has reported that, "compared to children in non-relative foster care and those in group care, children in kinship care are: More likely to report liking those with whom they live (93 percent vs. 79 percent [non-relative foster care] and 51 percent [group care]); More likely to report wanting their current placement to be their permanent home (61 percent vs. 27 percent and 2 percent); Less likely to report having tried to leave or runaway (6 percent vs. 16 percent and 35 percent); More likely to report that they "always felt loved" (94 percent vs. 82 percent [non-relative foster care])." Tiffany Conway and Rutledge Q. Hutson, *Is Kinship Care Good for Kids?,* CENTER FOR LAW AND SOCIAL POLICY, March 2, 2007, *available at* http://www.clasp.org/admin/site/publications/files/0347.pdf.

DHS has also acknowledged the benefits of relative care as follows: (i) provides love and care in a family setting, (ii) provides parents with a sense of hope that children will remain connected to their families, (iii) enables children to live with people they already know and trust, (iv) provides children with a sense of cultural identity and positive self-esteem, (v) helps a child maintain extended family ties, (vi) allows children to continue their family traditions and memories (vii) supports the child in building healthy relationships within the family (viii) supports the child's need for safety and well-being, and (ix) creates a sense of stability in the life of a child. DHS, *Relative Caregiving, What You Need to Know*, DHS-Pub-114(2-11) at 2.

The U.S. Supreme Court has also discussed the benefits of extended family members participating in childrearing. In *Moore v City of East Cleveland, Ohio,* 431 US 494; 97 S Ct 1932 (1977), in which the Court struck down a housing ordinance that narrowly defined the members of a family who could live in one home, the Court noted that "[i]t is through the family that we inculcate and pass down many of our most cherished value, moral and cultural" and that the Court's jurisprudence is:

> "by no means a tradition limited to respect for the bonds uniting the members of the nuclear family. The tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition. Over the years millions of our citizens have grown up in just such an environment, and most, surely, have profited from it. . . . Decisions concerning child rearing, which [our prior] cases have recognized as entitled to constitutional protection, long have been shared with grandparents or other relatives who occupy the same household indeed who may take on major responsibility for the rearing of the children. Especially in times of adversity, [] the broader family has tended to come together for mutual sustenance and to maintain or rebuild a secure home life." [431 US at 503-505.]

In sum, placing children with relatives for out-of-home placements, especially early-on in a child welfare case, has significant benefits for children.

2. Relative Placement Affects the Determination of Whether to Terminate a Parent's Parental Rights.

Relative placement may also reduce the likelihood of a termination of parental rights and, in effect, assist in the goal of reunification of families. The Michigan Supreme Court has already expressed that "[a] child's placement with relatives weighs against termination under MCL 712A.19a(6)(a), which expressly establishes that, although grounds allowing the initiation of termination proceedings are present, initiation of termination proceedings is not required when the children are "being cared for by relatives." *In re Mason,* 486 Mich at 164. This Court

further stated that the children's "placement with [the father's] family was an explicit factor to consider in determining whether termination was in the children's best interest . . ." *Id.* The Court noted that since the children were placed with their aunt and uncle, "the aunt and uncle may even retain primary custody through a guardianship if the court concludes that the children should not be returned to respondent but an ongoing relationship with him – rather than termination – is in the children's best interests. *See* MCL 712A.19a(7)(c). This option adds significance to the court's original failure to consider MCL 712A.19a(6)(a), which establishes that initiation of termination proceedings is not required when the children are 'being cared for by relatives' although a parent is not personally able to be a primary caregiver for the children." *Id.* at 168-169.

Relative placement may also generally help parents and their children reunite. The relative may provide more support to the parent and may have a better understanding of the relationship between the parent and children and needs of all parties.[8]

C. Analysis of Placement Decision in this Case Regarding DHS' Relative Inquiry.

In this case, it appears that DHS and the trial court did not meet the requirements under MCL 722.954a, MCR 3.965 or the DHS manual in investigating whether a relative placement was possible at the time of the placement determination for the children.

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[8] *Amici* recognize that relative placement with the great uncle here was denied because he was against reunification with the mother; nevertheless, in general, relative placement may assist reunification efforts as DHS recognizes in its own brief. See Joint Brief on Appeal – Appellant and MCI Superintendent ("DHS' Brief") at 22. ("At this stage, biology plays a logical role because the Legislature recognizes that, given the immediacy and the probable familiarity of a relative with the child and vice versa, it would likely be in the child's best interest to go with a relative. This is especially true where reunification of the child with a parent remains a legitimate permanency goal.").

As discussed above, DHS was required to identify, locate, and consult with relatives to determine if a relative placement was appropriate. See MCL 722.954a; MCR 3.965. Specifically, under the DHS manual applicable at the time, the foster care worker was required to first discuss with the parent "***all possible options such as placement with relatives.***" See FOM 2008 at 1 (emphasis added). Relative placements "***should be evaluated immediately.***" *Id.* at 3 (emphasis added). DHS must "identify and locate all relatives for possible placement of the child within their home within 30 days of the child's placement." *Id.* at 6. The foster care worker must: (1) discuss the options for relative placement with the parent(s) and child(ren), if appropriate; (2) obtain sufficient contact information to be able to contact relatives for possible placement; (3) ask each parent and child to identify all relatives including siblings related to the child(ren) by blood, marriage or adoption; obtain agreement from the parent(s) and the extended family for a particular relative to care for the child(ren), if possible; and complete a criminal history and central registry check on all household members; and (4) proceed with the home study process for all identified relatives that have acceptable criminal history and central registry clearances on all of the household members. *Id.* at 6-7.

The record here does not reflect that DHS ever asked the girls' father about his mother, as DHS was required to do. DHS was required to identify all relatives, including the paternal grandmother, Ms. Lori Scribner, within 30 days of removal. From there, DHS was required to obtain contact information in the same timeframe. There is no record that DHS ever obtained Ms. Scribner's contact information in the Initial Service Plan dated July 3, 2008. Appellant's Appendix at 109a-145a. Apparently, DHS did not identify her or obtain any of her contact information ***until she called DHS***. See Appellant's Appendix at 160a. DHS was required to consult with Ms. Scribner but did not. From there, DHS was then required to seek agreement

from the parents on the relative placement in question, which it did not, and run a criminal history search and registry clearance, which it also failed to do before the placement determination as to Ms. Scribner. DHS also never obtained a home study for Ms. Scribner before it made a placement determination. Instead, the Initial Service Plan omits any mention of Ms. Scribner until the September 23, 2009 updated version of the plan, when DHS recorded that Ms. Scribner called on July 9, 2008. *Id.* None of the versions of the Initial Service Plan document that any inquiry was made within 30 days of removal regarding who she was, where she was located, and if she was qualified to serve as a relative placement. They do not document that DHS attempted to call her or to send her a letter about the placement situation during this time. There is simply no evidence that DHS reached out to Ms. Scribner to discuss placement ***even though she had called DHS three months before the placement determination.*** See *Id.;* DHS' Brief at 6, nt. 33. It was DHS' duty to consult with relatives and they failed to adequately do so.[9] In addition, the record also does not reflect that the trial court directed DHS to identify, locate and consult with relatives regarding placement, as required in the court rules.

Rather, DHS' Brief gives only excuses for why it did not reach out to Ms. Scribner to evaluate her. Here, DHS' Brief discusses the fact that Ms. Scribner did not call DHS until five months after the removal of the children and that Ron Heeren (the girls' father) did not even suggest his mother as a possible placement – but these statements miss the point. *See* DHS'

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[9] DHS' reliance on the Initial Service Plan, its Court Report, and Family Assessment of Needs and Strengths to support its position that there were no qualifying relative placements fails to address the fact that DHS never contacted or spoke with Ms. Scribner about possible placement, which it was statutorily required to do. In addition, the Foster Care Review Board's unsupported, one-sentence pronouncement that DHS had "made diligent efforts to locate interested relatives" does not demonstrate that DHS satisfied its statutory mandate to identify, locate, and consult relatives, including Ms. Scribner.

Brief at 2. DHS then argues that Ms. Scribner's call to the foster care worker five months after removal but three months *before* the placement decision occurred was deficient because she did not reference her interest at that time in placement of the children. *Id.* at 6, nt. 33. Specifically, "castigating DHS . . . for not pursuing a placement change to Scribner is undeserved and not supported given her reticence to come forward." *Id.* at 25. The point is that *DHS* is responsible for *identifying, locating, and consulting* with relatives *within 30 days* to determine a placement – not the other way around. It is not the relative's statutory duty to seek out DHS. Rather, DHS must engage in exploring relative placement from the beginning. From the record available to *amici*, here, it appears that DHS did not identify, locate, or consult with Ms. Scribner within 30 days of the children's removal about placement of the children and, therefore, it did not fulfill its statutory duty.[10]

Since it appears that DHS failed in its duty to investigate a relative placement before making its placement determination, as required by MCL 722.954a, the Court should provide the guidance requested by *amici* to trial courts and emphasize the need for strict compliance with the relative placement procedures set forth in existing law. The matter should be remanded to the

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[10] Even when the parents' parental rights are still intact but removal of a child occurs, DHS has a statutory duty to identify, locate, and consult with relatives to explore a potential relative placement; this duty is not constrained to only exploring the relatives that a parent raises with DHS for potential placement or to neglect this duty if the parent is comfortable with foster care. See DHS' Brief at 4 ("Scribner's son had already informed the DHS that 'he feels comfortable with the placement of the girls' in foster care, and that he wanted them placed together with their brother (JRG) and wanted them to be near their mother to increase the possibility of reunification. Thus Scribner's son did not advocate for moving the children over a thousand miles away to Florida to be with Scribner."). In addition, even though DHS had competing considerations under the MCL 712A.18f(3) to place children in as close proximity to the child's parent's house as is consistent with the child's best interest and special needs, and under federal law to make reasonable efforts to place siblings together in an out-of-home placement, this does not mean that DHS can neglect its statutory duty to identify, locate and consult relatives regarding potential relative placements.

trial court to determine whether placement with Ms. Scribner would meet the children's development, emotional and physical needs consistent with MCL 722.954a. This relief is necessary in this case because the agency violated the statutory provision.[11]

IV. CONCLUSION

DHS and Michigan trial courts must do more to explore relative placement in the initial phase of a child welfare case. In fact, in both the 2002 and 2009 reports of DHS by the U.S. Department of Human and Health Services, the reports found that making "diligent efforts to locate and assess both maternal and paternal relatives as potential placement resources for children in foster care" was an area that "need[ed] improvement." U.S. Dep of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families Children's Bureau, Final Report: Michigan Child and Family Services Review March 2010, at 40. *Amici* believe that this is exactly what occurred here: DHS did not sufficiently investigate placement with Ms. Scribner before making its placement decision as required by law. Based on the foregoing, *amici* request that the Court find that DHS and the trial court violated MCL 722.954a and MCR 3.965 and remand to the trial court for a placement hearing.

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[11] *Amici* believe that MCL 722.954a(3), under the 2008 version of the statute, does not foreclose the Court from addressing the issue of whether DHS adequately complied with its duty to investigate relative placements before making its placement decision. This provision only applies to a person who received a written placement decision. There is no evidence that Ms. Scribner received such a written decision.

Therefore, for the foregoing reasons, *amici curiae* request that this Court grant their motion to submit this *amici curiae* brief in the above-referenced matter and the relief requested.

Respectfully submitted,

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