Order

Michigan Supreme Court
Lansing, Michigan

November 10, 2022

Bridget M. McCormack,
Chief Justice

164625

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

In re G. M. DIXSON, Minor.

SC: 164625
COA: 358376
Wayne CC Family Division: 2017-001531-NA

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On order of the Court, the application for leave to appeal the June 23, 2022 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

MCCORMACK, C.J. (*dissenting*).

I respectfully dissent from the Court's decision to deny leave because I do not believe the trial court should have terminated the respondent-mother's parental rights to her daughter. In my view, the child welfare system failed this family, and this failure is not anomalous. It illustrates the everyday problems of our child welfare system and how the legal standards put in place to protect families can work against them.

I. FACTS AND PROCEDURAL HISTORY

The respondent-mother and her daughter GMD became involved with the court when GMD's infant half-sister died of accidental asphyxiation from unsafe sleep practices in 2017. Child Protective Services learned that GMD, who was 18 months old, was living with family friends from church, the B Family. The respondent-mother needed some time to find suitable housing and to pursue her education and knew GMD would be well cared for there. But the arrangement was informal; the respondent-mother never set up a legal guardianship for GMD. And so, the Department of Health and Human Services (DHHS) petitioned to take temporary jurisdiction over GMD. She remained with the B Family while they completed the certification process to become licensed foster parents. For the next six years while the court considered GMD's future, she lived with the B Family and had regular visits with her mom.

When this case began in 2017, the respondent-mother was in a romantic relationship with MJ. The two had a son in October 2019. Now, MJ has full legal and physical custody of their son, and the respondent-mother has regular visits. The respondent-mother also has two older daughters who are in a guardianship with their grandmother. The respondent-mother has regular visits with them, too.

When the court took temporary jurisdiction over GMD, the respondent-mother received a treatment plan. The treatment plan required her to find suitable housing and employment and participate in parenting classes and therapy. In 2020, after concluding

that the respondent-mother had failed to benefit from services it offered, DHHS filed a supplemental petition seeking to terminate her parental rights.

As evidence that the respondent-mother had failed to benefit from services, the petition alleged inadequate parenting skills during visits with GMD, a struggle to maintain healthy relationships, and difficulties following through with mental health treatment like medication and therapy. The complaint referred to an argument between the respondent-mother and her then-boyfriend MJ in the DHHS office as evidence that she hadn't benefited from domestic-violence and anger-management services. Her continued relationship with MJ was evidence that she wasn't making healthy choices for her family.

A supplemental petition seeking to terminate a parent's rights only starts the process of termination. After DHHS filed the petition, the trial court conducted a series of hearings to determine whether there was clear and convincing evidence that "[t]he conditions that led to the adjudication continue to exist," MCL 712A.19b(3)(c)(*i*); the respondent-mother "fail[ed] to provide proper care or custody for the child," MCL 712A.19b(3)(g); or there is a "reasonable likelihood . . . that the child will be harmed if . . . returned to the home of the parent," MCL 712A.19b(3)(j).

Because of the COVID-19 pandemic, these hearings were delayed and ended up spanning from February 2020 to May 2021. The testimony at these hearings established that the respondent-mother had resolved many issues that led the court to take temporary, and then permanent, jurisdiction over GMD. She obtained a Section 8 housing voucher and a two-bedroom apartment she could afford. She found a job working at a nursing home to supplement monthly disability payments. After the birth of her son in October 2019, she stopped seeing MJ romantically; she only saw him at scheduled visits with her son.

The respondent-mother had completed parenting classes and therapy on domestic violence and anger management. But the initial opinion of the foster care worker assigned to GMD's case—Aliesha Alston—was that the respondent-mother had failed to benefit from these services. Alston's evidence of the alleged failure came from observations during supervised visits between GMD and the respondent-mother. The respondent-mother was "inconsistent" during visits and "struggle[d] to make proper parent choices." She missed some visits, but only because of emergency room visits associated with her high-risk pregnancy with her son. And by May 2021, Alston changed her mind. She explained that the respondent-mother "*did* benefit" as evidenced by "growth in regards to how to handle [GMD]." (Emphasis added.)

Alston also initially cited the respondent-mother's relationship with MJ as evidence that the respondent-mother failed to benefit from domestic-violence therapy. But of course, by the time these hearings concluded in May 2021, the respondent-mother hadn't been seeing MJ romantically for over a year and a half.

The respondent-mother's mental health was stable during the termination hearings. In February 2020, Alston testified that the respondent-mother had started taking her medication and participating in services. And the respondent-mother testified that she felt she had benefited from therapy, explaining in March 2020 that "me and [GMD] have a closer bond than we had before now."

But her mental health hadn't always been quite so stable. While the hearings were suspended because of the pandemic, Alston learned from the respondent-mother's father that the respondent-mother was struggling with her mental health. She was having trouble keeping her apartment clean and was acting erratically. At one point, when he picked her up in his car and she was not taking her medication, she grabbed the steering wheel from him while he drove.

But by May 2021, the respondent-mother testified that she was once again taking her medication and seeing her therapist twice a week. And her father confirmed it, explaining that since November 2020, "she's been doing excellent . . . keeping her house up to date [and] taking her medication."

Everyone who testified agreed that GMD and the respondent-mother had a strong bond. GMD loved the respondent-mother and the respondent-mother loved GMD. During visits, Alston testified that the respondent-mother was "happy to see [GMD]. She often ask[ed] her about her day. And she [was] very involved in the activities." Alston reiterated the same in May 2021. And seven-year-old GMD expressed an interest in continuing to see her mom and her half-siblings.

As clear as it was that GMD loved her mom, it was also clear from the testimony of caseworkers who interacted with GMD that she had been understandably unsettled by the ongoing custody dispute. Because she didn't know what would happen to her, she felt anxious and sometimes acted out. She wanted the case to be over and to feel settled. She called the B Family parents Mom and Dad, and she wanted to continue living with them. Their home was the only home she remembered. But she also wanted to keep seeing the respondent-mother.

In May 2021, the trial court terminated the respondent-mother's parental rights. It found clear and convincing evidence that "the conditions that led to this adjudication . . . continue to exist today" and that "it would not be safe for the child to be returned . . . to the mother at this time or at a point in time in the reasonably foreseeable future." It cited the respondent-mother's ongoing struggles with mental health and the fact that she had driven on a suspended license to get to court that day. The court feared that GMD's well-being would be harmed if she was returned to her mother's care full-time, because she had a strong attachment with the B Family. At no point during the termination hearings did anyone—the DHHS staff, the respondent-mother's attorney, the lawyer-

guardian ad litem, the judge—consider any other possible arrangement. Everyone focused solely on two choices: full custody or full termination.

The respondent-mother appealed the decision in the Court of Appeals. After reviewing her case, a panel affirmed the trial court's decision to terminate parental rights. The respondent-mother sought leave to appeal here.

The respondent-mother and GMD's case is both tragic and frustratingly commonplace. A mom expressed a strong interest to remain a part of her daughter's life. Her daughter expressed a similarly strong interest to see her mom. And yet the best our legal system has to offer them is a complete severing of their legal relationship, with no consideration of creative solutions that would benefit the whole family. I wish this case was an outlier. But in ten years reviewing records in termination cases, I have seen many just like this where our statutory process for protecting children has failed them. That is, the legal structure that governs these proceedings disserved the people it is supposed to protect. The respondent-mother and GMD deserve better. Indeed, we owe every family in the child-protection system more.

II. THE HARM OF REMOVAL

When the court took temporary jurisdiction over GMD back in 2017, thankfully, her day-to-day life didn't change. Because she was living with the B Family before court involvement and they were allowed to keep her in their home while becoming certified foster parents, these proceedings did not begin the way most child welfare cases do: with the forcible removal of the child from home. Although GMD was spared that trauma, most children are not.

Before a court can remove a child from their parent, it must make certain findings about the harm a child would face at home, the reasonable efforts made to prevent removal, and whether any other remedy could protect the child. MCL 712A.14b. While courts must consider whether "[t]here is reasonable cause to believe that the child is at substantial risk of harm" with their parents, there is no requirement to consider the "substantial risk of harm" from removal, despite the clear evidence that removal has lasting negative effects on a child's mental and physical well-being into adulthood.

Separating a child from their family increases the likelihood that a child will suffer from attachment disorders and separation anxiety, even when families are eventually reunited. Trivedi, *The Harm of Child Removal*, 43 NYU Rev L & Soc Change 523, 530-531 (2019). No matter what happens after removal, the disruption a child experiences when separated from their family creates a feeling of "ambiguous loss" that can lead to lasting detrimental mental and physical health effects. *Id*. at 533; see also Sankaran, Church, & Mitchell, *A Cure Worse than the Disease? The Impact of Removal on Children and Their Families*, 102 Marq L Rev 1161 (2019).

Once removed, while some children may be placed with a relative, many more land in foster care with strangers. Sadly, foster care can be unsafe too. In fact, children in foster care are more likely to be physically and sexually abused than other children. *The Harm of Removal*, 43 NYU Rev L & Soc Change at 542-543. Foster care can cause tremendous instability, as many children experience "foster care drift," bouncing between multiple unstable placements for years until they age out of care. *Id*. at 544. Foster care placements can also be neglectful. According to the American Academy of Pediatrics, " '[c]hildren and adolescents in foster care have a higher prevalence of physical, developmental, dental, and behavioral health conditions than any other group of children,' " even when controlling for poverty. *Id*. at 546-547 (citation omitted). Routine medical care, dental care, and necessities often slip through the cracks.

Time spent in foster care leads to worse mental and physical health outcomes into adulthood. Children who have experienced foster care are "five times more likely to be diagnosed with depression, four times more likely to be diagnosed with ADHD, and ten times more likely to be diagnosed with bipolar disorder than other children[.]" Wildeman & Emanuel, *Cumulative Risks of Foster Care Placement by Age 18 for U.S. Children, 2000–2011*, 9 PLoS ONE 1, 1 (2014). Moving into adulthood, children who spend time in foster care are at a higher risk for "low educational attainment, homelessness, unemployment, economic hardship, unplanned pregnancies, mental health disorders, and criminal justice involvement." Dettlaff & Boyd, *Racial Disproportionality and Disparities in the Child Welfare System: Why Do They Exist, and What Can Be Done to Address Them?* 692 Annals Am Acad Pol & Soc Sci, 253, 255 (2020). Foster care placement predicts atypically high rates of depression, post-traumatic stress disorder, and drug addiction. *The Harm of Removal*, 43 NYU Rev L & Soc Change at 549-551.

The harms of removal and sometimes also foster care can produce "worse long-term outcomes than if the child had remained at home" in many cases. *Id*. at 541 (emphasis omitted). But Michigan's removal statutes do not require courts to balance these harms against the harm that might result from staying home.

III. (UN)REASONABLE EFFORTS

In Michigan, when a child is removed from their parents' care and placed in foster care, "[r]easonable efforts to reunify the child and family must be made" by DHHS in most cases. MCL 712A.19a(2). The court has an obligation to "determine whether the agency has made reasonable efforts" within 60 days of removal and at each permanency planning hearing. MCL 712A.19a(4); see also MCR 3.965(C)(4).

DHHS's reasonable efforts must include the development of a case service plan, which "includes services to be provided by and responsibilities and obligations of the agency and activities, responsibilities, and obligations of the parent." MCL

712A.13a(1)(d). In cases that fall under the broad umbrella of "neglect," like this one, case service plans often include a series of obligations a parent must fulfill to earn reunification. Broadly speaking, services tend to fall into four categories: (1) improving material conditions, like housing and income, (2) attending and benefiting from classes, (3) mental and physical health care, and (4) attending supervised or unsupervised visits.

Court involvement often begins when a family is in crisis. For the respondent-mother, single-parenting a newborn and an 18-month-old, without stable housing, and while trying to finish school was a crisis. Her case treatment plan required her to rectify the conditions that led to court involvement: find housing, find a job, end an unhealthy romantic relationship. She did these things. And it was easy for the court to assess her success in these obligations objectively. When, for example, she obtained a Section 8 voucher and an affordable apartment, that unambiguously satisfied the instruction that she "find suitable housing."

But the obligations are not all easy to measure objectively. The respondent-mother did not just have to attend parenting and relationship classes. She had to *benefit* from them. But what does that mean? Asking a parent to participate in services is a reasonable request. But terminating the parent-child relationship on the sole basis of a failure to benefit from such services—as determined subjectively by a single caseworker—is unreasonable. Complicating these more subjective obligations further is the disconnect parents and caseworkers can have about "compliance." See Smith, *Child Welfare Service Plan Compliance: Perceptions of Parents and Caseworkers*, 89 Families in Soc'y 521 (2008). Caseworkers are more likely to correlate treatment plan compliance with a desire to parent, and any compliance "failure" with the absence of that desire. But many parents attribute their ability to comply with various external barriers, many of which—transportation, childcare, time off from work—are outside of their control. *Id*. at 528-529; upEND, *How We endUP: A Future Without Family Policing* (2021), p 8 ("Compliance is often impossible as families are asked to participate in services with no consideration to issues of accessibility, transportation, childcare, or job responsibilities."), available at <https://upendmovement.org/wp-content/uploads/2021/06/How-We-endUP-6.18.21.pdf> (accessed November 1, 2022) [https://perma.cc/RR4D-USD4].

Raising a child is difficult, even when there is no crisis. The statutes governing termination proceedings require only "reasonable" efforts—not perfect efforts—from DHHS to reunify the family. And yet, we often require parents to meet each requirement with near perfection. Should any obligation in a court's order not be completed, a parent can lose their legal rights to their child.

In the respondent-mother's case, the trial court terminated her parental rights for two reasons: her ongoing efforts to manage her mental health and a decision to drive to court with a suspended license. The substantial progress the respondent-mother had made toward rectifying the conditions that led to court involvement in her family didn't matter.

And whether external factors, like poverty, contributed to her decision to drive to court without a valid license was not relevant either. The court seemed to want a perfect parent, not a reasonable parent.

IV. STATUTORY GROUNDS FOR TERMINATION

Before a court can terminate a parent's rights, it must find that statutory grounds for termination exist by clear and convincing evidence. MCL 712A.19b(3). These statutory grounds for termination, listed in MCL 712A.19b(3), include some specific provisions for cases of desertion, physical abuse, or sexual abuse, as well as more general provisions often cited in neglect cases. See MCL 712A.19b(3)(a) and (b).

Some grounds for termination are backward-looking, asking whether the conditions that led to court involvement have been resolved. For instance, a court can order termination where "conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time . . . ." MCL 712A.19b(3)(c)(*i*). Other grounds for termination are more forward-looking, asking whether the parent has shown an ability to "provide proper care and custody" for the child or whether there is a likelihood the child will be "harmed if he or she is returned to the home of the parent." MCL 712A.19b(3)(g) and (j).

The problem with this statutory framework is that it forces on courts a binary choice: full custody or full termination. It discourages creativity by courts and advocates in considering alternative arrangements for a family.

Take guardianship, for one example. See MCL 700.5205. Families can enter into a limited guardianship in which a parent "voluntarily consent[s] to the suspension of their parental rights," rather than full termination. MCL 700.5205(1)(b). The plan can include a provision for parenting time, which would allow for a parent to remain a meaningful part of a child's life. MCL 700.5205(2)(b). Once a court is deciding whether to terminate, such solutions are not on the table.

Nor does the statutory framework provide any guidance to courts about how far back to look in an assessment or how far into the future to project. As cases progress from initial disposition to final hearing, a parent's status at the final hearing date is all that matters—the arc of a parent's progress toward achieving challenging goals is not relevant. Sadly, this case illustrates this problem. From the point of court involvement to the final hearing, the respondent-mother made *immense* progress toward the goals laid out by DHHS in her agency treatment plan. She found housing, got a job, took classes, left a toxic relationship, found a therapist, and began taking her medication. But because she had not convinced the court that she was stable enough in these accomplishments on the day of the termination hearing, she lost the chance to continue improving.

The ambiguity within the statutory framework allows more harm. For example, the respondent-mother's parental rights were terminated because "[t]he conditions that led to adjudication continue to exist . . . ." MCL 712A.19b(3)(c)(*i*). But the statutory language places no limits on what "conditions" can be included in a petition seeking custody. And so, petitions can read as narratives of past mistakes, many of which cannot be translated into tasks through which a parent can prove progress. These conditions will inevitably "continue to exist."

Here again, the respondent-mother's experience illustrates this problem. In affirming the trial court's finding that past conditions continued to exist, the Court of Appeals relied in part on facts the respondent-mother could not possibly resolve to support its decision. For example, it cited the respondent-mother's initial choice to place GMD in an informal guardianship while she looked for housing. And it also cited the respondent-mother's own upbringing, concluding that she did not have a "personal foundation to apply to her own parenting." *In re GM Dixson*, unpublished per curiam opinion of the Court of Appeals, issued June 23, 2022 (Docket No. 358376), p 7. It said she had a "history of giving birth to children and relying on others to raise them when she could not cope." *Id.* To remedy these historical experiences, the respondent-mother would need a time machine. To terminate a parent's rights by labeling historical facts as "conditions" that "continue to exist" is illogical and unfair.

V. BEST INTERESTS

After a trial court finds statutory grounds exist to terminate a parent's rights by clear and convincing evidence, it must next determine whether termination is in the child's best interests by a preponderance of the evidence. MCL 712A.19b(5). Courts making this determination are encouraged to consider several factors such as " 'the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home.' " *In re White*, 303 Mich App 701, 713 (2014) (citation omitted). A court can look to the definition of "best interests" from the Child Custody Act for additional guidance, which includes factors like the love between parent and child, the parent's capacity for care, permanence, the health of the parents, and the reasonable preference of the child. MCL 722.23(3); *In re Medina*, 317 Mich App 219, 238 (2016). But neither the statutes, the court rules, nor the common law requires courts to consider the harm a child experiences when removed from their parents' care and placed in foster care.

And the best-interests standard is capacious, allowing for individual, subjective biases about parenting to drive decision-making. This isn't a new observation, which makes it all the more frustrating. In 1977, then Justice Brennan noted that the "best interests" standard's open-ended nature allowed "social workers of middle-class backgrounds, perhaps unconsciously, . . . to favor continued placement in foster care with a generally higher-status family" because of a "bias that treats the natural parents' poverty

and lifestyle as prejudicial to the best interests of the child." *Smith v Org of Foster Families for Equality and Reform*, 431 US 816, 834 (1977).

The standard has been consistently criticized since then for its "indeterminacy," which "invites the use of cognitive shortcuts" including "stereotypes and biases." Berger, *How Embedded Knowledge Structures Affect Judicial Decision Making: An Analysis of Metaphor, Narrative, and Imagination in Child Custody Disputes*, 18 S Cal Interdisc L J 298 (2009); see also *Lassiter v Dep't of Social Servs*, 452 US 18, 45 n 13 (1981) ("This Court more than once has adverted to the fact that the 'best interests of the child' standard offers little guidance to judges, and may effectively encourage them to rely on their own personal values.").

The best-interests standard does ask courts to assess a child's need for permanence and stability, a valuable data point. But when the context for that determination is rapid removal and lengthy disposition, this explicit emphasis on permanence will always put a thumb on the scale for termination. When a court removes a child and places them in foster care, they will adapt to that new normal. Because child welfare cases often unfold over the course of months (if not years), a decision to remove a child often predetermines that the child's stable and permanent placement *becomes* the foster placement. This is particularly true in cases in which the child is removed at a young age and spends a significant percentage of their life in a foster placement. In this way, termination becomes, unfortunately, more likely to be "in the child's best interest" from the moment of removal.

When determining whether termination of parental rights was in GMD's best interests, the court heard testimony about how disruptive the court case had been to GMD's life. She wondered when it would end, when she would have a stable sense of where she would live, and what her future looked like. In other words, she understandably longed for permanency and certainty. The termination-of-parental-rights framework creates an illusion that there are only two options: terminate and give the child permanence, or don't terminate and keep the child in limbo while the case remains pending.

As a result, the court didn't determine what stability meant for GMD. While it's true that she had always lived with the B Family, she had also always had visits with her mom. Stability for GMD *was* maintaining the status quo, with her mom's time-limited—but otherwise meaningful—involvement in her life. The failure to consider an arrangement for GMD that involved contact with her mom is particularly frustrating because the respondent-mother has such arrangements set up successfully with her other children.

VI. RACIAL DISPARITIES IN OUR CHILD WELFARE SYSTEM

Beyond problems with the way we adjudicate child welfare cases, our child welfare system is not equal-opportunity. The likelihood that a family will be involved with the child welfare system correlates directly with the child's race. Overrepresentation of

minority children in the child welfare system has been a well-documented problem for decades. For example, in 2020, although Black children represented only 14% of the total population of children in the United States, they represented 23% of children in foster care. *Racial Disproportionality*, 692 Annals Am Acad of Pol & Soc Sci at 253-254. The number of Hispanic children involved in the system is also disproportionate to their representation in the general population. For example, "[i]n 2016, Hispanics made up 17.6 percent of the national population, yet constituted twenty-one percent of the foster care population." *The Harm of Removal*, 43 NYU Rev L & Soc Change at 539. And, in 2007, "in many states, the percentage of Native American children in foster care was well over twice the percentage of Native American children in the general population." *Id*. at 539-540.

The disparities exist at every phase of child welfare adjudication. Minority children are more likely than white children to be reported as abused or neglected, more likely to be removed from their parents' care, and less likely to be reunited with their parents at the end of a case. *Racial Disproportionality*, 692 Annals Am Acad Pol & Soc Sci at 253-254.

Researchers who study racial disproportionality in the child welfare system see many contributing factors. Minority children and families are more likely to experience poverty, which is often viewed as neglect. *Id*. at 257. As discussed above, the legal framework governing child welfare cases is full of open-ended, hard-to-apply standards that invite subjectivity and bias. Minority families may experience "cultural misunderstandings" from courts and advocates who equate parenting practices different from their own as neglectful or wrong. *Id*. at 265.

VII. SOLUTIONS

There is good news: there are many concrete actions we can take to improve how our legal system treats our families. Some of these changes are small, some less so. All are achievable without making any drastic changes to our laws.

Parents who come into contact with the child welfare system should have legal representation from start to finish. See Sankaran, *With Child Welfare, Racism is Hiding in the Discretion*, The Imprint (June 21, 2020). Courts and the advocates who work within them should always prioritize family placements over nonfamily placements, even where there might be added hurdles on the front end, like the completion of the foster parent certification process. Even when family placements are unavailable, fictive kinship placement with friends or neighbors should be prioritized to minimize disruption.

While a parent's involvement with the court may stem from a moment of crisis or a bad decision, most parents have an immense capacity to grow and parent their children if supported. This makes the adversarial model a bad fit for child welfare cases. If advocates could see their role as finding the best solution for a whole family, not as an adversary to a parent or child, we might grow solutions. And prioritizing treating families with

compassion in each interaction allows advocates to identify better solutions to problems. See Markey & Sankaran, *Compassion: The Necessary Foundation to Reunify Families Involved in the Foster Care System*, 58 Fam Cts Rev 908 (2020).

Racial disproportionality in child welfare dockets should be addressed transparently. Making equity an established, agency-wide goal of leadership helps. *Racial Disproportionality*, 692 Annals Am Acad Pol & Soc Sci at 266. And by trying to understand families more holistically, advocates can also reduce the likelihood that their own subjective biases will fill gaps in a family's story and lead to false conclusions that cultural differences are neglectful, harmful, and wrong.

Changes to the legal framework governing termination would help too. We could require courts to consider the harm of removal and select the least-disruptive placement for a child. In Washington, D.C., the local court rules require courts to " 'evaluate the harm to the child that may result from removal' " before removing a child from their parents. *The Harm of Removal*, 43 NYU Rev L & Soc Change at 567 (citation omitted). The court must consider the " 'child's attitude toward removal and ties to the parent,' " their " 'relationships with other members of the household,' " and the " 'disruption to the child's schooling and social relationships' " that removal might cause. *Id*. (citation omitted). Since implementing this court rule, Washington, D.C., has had one of the largest decreases in children entering foster care in the country. *Id*.

Along with expressly requiring courts to evaluate the harm of removal, our legal framework could also integrate the limited-guardianship process into the termination-of-parental-rights adjudication, requiring courts to take a final look at less-restrictive arrangements before full termination. Such a change would recognize that for many children, maintaining a connection to siblings, relatives, and even their neighborhood is immensely important for their mental and physical well-being. There are many creative solutions to keep children connected to their family and place of origin that don't require a parent to have full custody.

One of the most effective ways to solve the problems of our child welfare system is to reduce the need for it. The more we move solutions upstream, the less we will need downstream interventions. A shift in priorities from punishing families on the back end to supporting families on the front end is needed. Because we already know which factors in a parent's life might lead that parent to neglect or abuse their children, we can prevent many of them. There is a clear link between poverty and child neglect. In some cases, this is because "child neglect" and "poverty" are conflated: neglect is a stand-in for an inability to provide basic needs like food, shelter, medical care. *How We endUP* at 7. Any program aimed at reducing poverty will reduce the need to get courts and lawyers involved in families' lives. See Sankaran & Church, *Rethinking Foster Care: Why Our Current Approach to Child Welfare Has Failed*, 73 SMU L Rev F 123, 137 (2020).

Programs designed to aid poor families, like supportive housing programs and Head Start, have been shown to reduce a child's likelihood of ending up in foster care. *Id*. Giving parents the resources they need to provide for their children directly, rather than removing children from their family home, would go a long way to resolving the real issue of child poverty without the added trauma of separation. There is recent empirical evidence about this strategy from the COVID-19 pandemic: the annual child tax credit provided to families under the American Rescue Plan. See Roberts, *Torn Apart: How the Child Welfare System Destroys Black Families—And How Abolition Can Build a Safer World* (New York: Basic Books, 2022), p 299.

There are, of course, cases of neglect or abuse where children should not remain with their parents. But when a child welfare system spends too much time investigating, monitoring, and adjudicating families that do not require court intervention, these serious cases can slip through the cracks. A study of Texas's child welfare system found that while Texas has one of the highest rates of child removal in the country, it also had one of the highest rates of child fatality. *Torn Apart*, p 287. The study concluded that " 'the statistical analysis shows no relationship between a state's intervention with a family, as measured by its reporting rate, service rate, or removal rate, and its child abuse and neglect death rate.' " *Id.* Front-end support for families would allow child-protection professionals to focus time and resources on children who truly need direct involvement from the state to be safe.

After nearly six years of court involvement, GMD ended up where the respondent-mother had placed her at the start: in the home of her family friends, the B Family. But now, with her rights terminated, the respondent-mother may or may not see GMD. How would this case have turned out if, rather than admonishing the respondent-mother for failing to secure a legal guardianship (a process that's confusing and not common knowledge to every new parent who might call on friends and family to help), the court had simply helped her set one up? What if the respondent-mother had received a Section 8 voucher before court involvement? What if she had had access to affordable childcare for GMD while she was in school? What if mental health services were affordable and easy to access?

Because I believe termination was unnecessary for this family, I respectfully dissent from the Court's denial of leave to appeal.