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Michigan Supreme Court
State Court Administrative Office
Child Welfare Services Division
Michigan Hall of Justice
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Lansing, MI 48909
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Carl Gromek, State Court Administrator
Michigan Foster Care Review Board Program
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Attached are the Findings and Recommendations from a recent foster parent appeal meeting.

The following checked item applies to this meeting:

- The Board agrees with the foster parent(s)/relative placement that the ward's removal is/was not in the ward's best interests. Therefore, the attached Findings and Recommendations of the Board will be submitted to the Family Division of the Circuit Court in your county, which must schedule a hearing in 7 to 14 days, pursuant to 1997 PA 163, and make a final decision. Until that time, the Agency may not move the ward; COURT- PLEASE SEND A COPY OF THE FINAL ORDER FOLLOWING THE COURT'S REVIEW TO: FCRB, P.O. BOX 30048, LANSING, MI 48909 OR FAX TO FCRB AT 517-373-8922.
- The Board agrees with the foster parent(s)/relative placement that the ward's removal is/was not in the ward's best interests. Therefore, the attached Findings and Recommendations of the Board will be submitted to the MCI Superintendent, who must make a decision within 14 days regarding the child's placement and inform each interested party what the decision is pursuant to 2000 PA 46. Until that time, the Agency may not move the ward; MCI - PLEASE SEND A COPY OF YOUR DECISION TO: FCRB, P.O. BOX 30048, LANSING, MI 48909.
- X The Board agrees with the Agency that the move is in the ward's best interests. Therefore, the court will not hold a hearing, and the MCI Superintendent will not make a decision regarding the ward's placement. The foster parents' appeal ends at this point.

**STATE OF MICHIGAN
MICHIGAN SUPREME COURT
STATE COURT ADMINISTRATIVE OFFICE
FOSTER CARE REVIEW BOARD**

Foster Parent Appeal Investigation

FINDINGS AND CONCLUSION

TO: Honorable Terrence Thomas
Newaygo County Family Division Court

CASE NAME: KEAST, Alyssa and Amber

FROM: Newaygo County Review Board #27

COURT #: 05-6388-NA

DATE: July 13, 2005

DHS#: X2325462A; X1437623A

Pursuant to 2000 PA 46, MCL § 712A.13b; MSA § 27.3178 (598.13b), this case was reviewed on July 13, 2005 at the request of Tim and Barbara Atwood/ Relative Caregivers/Foster Parent.

**PRESENT: Tim and Barbara Atwood (Maternal Grandparents/Relative Caregivers/Foster Parents);
Kathy Sholty (Newaygo County Department of Human Services Direct Care Caseworker);
Brian Vanderzalm (Newaygo County Department of Human Services Program Manager);
Erika Keast (Mother of children); Mark R. Schropp (Attorney for Ms. Erika Keast)**

These findings and recommendations in this report are based upon information made available to the Board by the Agency and interested parties. The following are recommendations to the Court, not a court order.

The Agency removed the above-captioned children from the Tim and Barbara Atwood's relative caregivers/foster home because caregivers were allowing the children's mother to take them to her boyfriend's house even though there is a no contact order in place. They were also allowing Ms. Keast unapproved parenting times beyond what is scheduled. The Agency indicated that Mr. Tim Atwood smokes marijuana on a daily basis.

For the reasons asserted at Findings 2 and 3, we **SUPPORT** the removal. Consequently, Mr. and Ms. Atwood's appeal ends here and the Agency maintains the current placement.

THE BOARD'S FINDINGS:

1. Based on the Agency's representations, we find that the Agency wanted to remove Alyssa (age 5) and Amber (age 2) from Tim and Barbara Atwood's care, in sum, because the Agency believed that Mr. and Mrs. Atwood were not meeting Amber and Alyssa's needs. Specifically the Agency asserts that:
 - a. Ms. Sholty of the Newaygo County Department of Human Services is the direct care caseworker assigned to the children and Mr. Vanderzalm was the previous direct care caseworker prior to being promoted to Program Manager.
 - b. According to Mr. Vanderzalm, there were two primary reasons the Agency removed the children:
 - 1) The admitted drug use by Mr. Atwood.

- 2) Mr. and Ms. Tim Atwood were not in compliance with the Agency's rule regarding the children having contact with their mother's boyfriend during parenting times. There is a no contact order, as part of the Department of Human Services Parent Agency Treatment Plan and Service Agreement, between the children and Ms. Keast's boyfriend.

Mr. Vanderzalm indicated that allegations of Mr. Atwood smoking marijuana with his daughter were received by the Agency. During the Agency's investigation of these allegations, they subsequently discovered that Ms. Keast was having an unauthorized number of contacts with the children and allowing her boyfriend to be around her children. Mr. Vanderzalm indicated that Mr. Atwood admitted using marijuana, although he minimizes his usage of marijuana, and also admitted to allowing the children to visit their mother and boyfriend's residence unsupervised. This was discussed with Mr. and Ms. Atwood at the time of the initial investigation and the Agency discovered that they then allowed the children to return to their mother's home after being warned not to allow this to happen. A Children's Protective Services investigation was initiated involving an allegation of Amber being pushed against the wall by the grandmother and this allegation was unsubstantiated.

- c. According to Ms. Sholty, when the second report of the Atwood's allowing the children unsupervised contact with the mother was received by the Agency, the Agency gave notice to Mr. and Ms. Atwood that they were removing the children. An adult son of the Atwood's was identified as potential placement. The Agency studied this home and approved this placement. The children were placed in this home from June 25th until July 1st, when this family requested the children to be removed. Ms. Sholty indicated when questioned by the Board if the grandparents were allowed to have visitation with the children and she stated that a request for visitation had not been received to date, but would be given consideration.
- d. According to Ms. Keast, her children were placed with her brother in June, 2005 for a few days as a result of their removal from her parents. The children have been doing well in the new foster home. She is in agreement with the move to the foster home and wants the children to remain in foster care versus returning them to her parent's home.
- e. According to Mr. Schropp, they are in agreement with the Department of Human Service's decision to remove the children even though this may go against Ms. Keast's long term interest in reuniting with her children. Mr. Schropp indicated that Ms. Keast has concerns about her father's regular marijuana usage beyond what was described by Mr. Atwood during this appeal.
- f. According to Mr. Wingfield, he allowed Ms. Keast and the children to move in with him during August, 2004. Ms. Keast indicated that she needed a place to stay and that she was having problems with her parents.

2. Based on Mr. and Ms. Atwood's representations and those presents, we find the Atwood's refute the Agency contentions by asserting the following:

- a. According to Mr. Atwood, when they started the appeal process it was because the children were being removed from their home. They were in original agreement with the move to their son's home. Mr. Atwood indicated that when they call the FCRB office they were told if the children were removed from this son's home they would have the right to this appeal. Mr. Atwood indicated they were aware they were to supervise the contact between the children and their mother and that the children were not to have contact with her boyfriend. Mr. Atwood indicated that they were the party who initially brought this matter to the Court's attention due to their daughter's drug usage and arrangements were being made for the grandparents to sign guardianship papers at one point. When questioned by the Board concerning the supervision of the children when they were with their mother, Mr. Atwood admitted he understood they were to supervise these contacts but did not do so.

3. State law governing foster care moves prescribes our procedure in instances where an agency wants to remove a child from a foster home absent a finding of harm or risk of harm to the child.¹ In short, the law prescribes that because of trauma a foster child suffers as a result of multiple moves, once placed in or moved to a foster home, a foster child must not be moved to another foster home unnecessarily.² Accordingly, where a foster child is not determined to be at risk of harm,³ the Agency shoulders the burden of showing that removal is necessary⁴ and that removal is in the child's best interest.⁵
4. Applying the aforementioned procedures to the facts of this case, we find that the Agency demonstrated that Amber and Alyssa were at risk of harm; their needs were not being met under Tim and Barbara Atwood's care and moving Alyssa and Amber were in their best interest.⁶

THE BOARD'S CONCLUSIONS:

For the reasons asserted at Findings 2, 3 and 4, we **SUPPORT** the removal and the appeal ends here.

THE BOARD'S RECOMMENDATIONS:

None

Chairperson: Ronald T. PreFontaine Ed.D. Program Representative: Kevin C. Sherman
Ron PreFontaine, Ed. D


Kevin C. Sherman

cc: Interested Parties

APPEAL ISSUE CODES: F1

1. See MCL § 712A.13b(2)(c) and cf. §712A.13b(7).

2. See Senate Legislative Analysis, SB 490, June 17, 1997 PA 163, which tells us that the intent of § 712A.13b is to effect [Recommendations 123 and 125 of] *In Our Hands: Report of the Binsfeld Children's Commission*. July, 1996.

3. DHS policy tells its mission staff that it may be in the child's best interest to be moved "[w]hen the placement of the child with a particular caregiver is not meeting the child's needs[.]" CFF 722-3, p 15. However, DHS policy also bars its mission staff [and contract service providers (see CFF 913- 913-5, et seq.)] from removing a child from a home where the child's needs are met in the current family or from removing a child from a home solely for the purpose of achieving a "more successful" placement based on the placement selection criteria. CFF 722-3, p 15.

4. This is not only axiomatic, it also follows from Department policy. See CFF 722-3, p 15.

5. That is, the agency needs to demonstrate to the review board that the child will be better off once moved. Stated differently, the agency's burden is to show that, notwithstanding its reason(s) for wanting to move the child, the benefit of changing the child's placement outweighs the trauma that the child will likely experience as a result of the placement change. For instance, the agency could show that it is more likely than not that the potential love, affection, guidance, and emotional ties that may be created in a new placement outweigh those existing between the complaining caregiver and the child who is the subject of the appeal.

6. For guidance consult MCL § 722.33 where the "best interest of the child" is defined.