

Winter 2012

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Judging Parents, Judging Place: Poverty, Rurality, and Termination of Parental Rights

Janet L. Wallace*

Lisa R. Pruitt**

ABSTRACT

Parents are judged constantly, by fellow parents and by wider society. But the consequences of judging parents may extend beyond community reputation and social status. One of the harshest potential consequences is the state's termination of parental rights. In such legal contexts, the state assesses parents' merits as parents in relation to a wide array of their characteristics, decisions and actions, including where the parents live.

Among those parents judged harshly in relation to geography are impoverished parents who live in rural places. We argue that such judgments are unjust because poor rural parents often do not have ready access to state support in the form of programs that would permit them to be better parents. That is, spatial obstacles may prevent these parents from meeting their children's first order needs by gaining access to public benefits. Rural parents are often similarly without reasonable access to the types of services and programs that would enhance their parenting skills, either because such programs are not offered in rural places or because the transportation obstacles to reach the programs are too great. We thus highlight the state's hypocrisy in judging rural parents, including these parents' failure to avail themselves of public services, even as the state fails to make meaningfully available the very assistance and services that would enable them to be better parents.

In considering termination of parental rights in rural contexts, we survey cases that have used rural residence as a strike against a parent in termination proceedings. Our critiques based on these cases fall into three cate-

* J.D. University of California, Davis 2010. Thanks to William Wallace for editorial assistance on early drafts and unceasing support.

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gories: First, while courts have stated that poverty is an impermissible basis for terminating parental rights, cases reveal that place may become a proxy for poverty and may be cited to justify removal of a child or termination of parental rights. Second, courts sometimes make decisions based on rural stereotypes, and these decisions may disserve rural families. Third, and in a similar vein, courts sometimes fail to account for rural realities when making child welfare decisions about populations and circumstances with which they may be less familiar. In short, courts often impose impractical expectations upon parents. All of these critiques call particular attention to the plight of rural families, who – like rural people and places generally – often are overlooked in the increasingly metrocentric realm of law and legal scholarship.

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I. INTRODUCTION

Embedded in the national consciousness, espoused by folklore and the media, is the notion that rural families live the good life.¹ Fathers work the land to provide for the family while mothers attend to domestic chores, and children play safely in wide-open spaces. The lifestyle is simple and tranquil.² According to these popular notions, even rural folks who are poor remain insulated from the difficulties that plague poor urban families.³ Rural families, so the storyline goes, can provide for themselves through self-provisioning and the informal economy.⁴ Their cost of living is low,⁵ and crime is rare.⁶

1. See HELEN NEARING & SCOTT NEARING, *LIVING THE GOOD LIFE: HELEN AND SCOTT NEARING'S SIXTY YEARS OF SELF-SUFFICIENT LIVING* 4-6 (1990); Thomas D. Hansen, *On Myth and Reality: The Stress of Life in Rural America*, 4 RES. RURAL ED. 147, 147 (1987). It is ironic, in light of our findings, that prior to the 1909 White House Conference on Children, children living in urban poverty were moved to rural areas so as to expose them to "traditional American family values, promote assimilation, and remove them from parental influence." Tonya L. Brito, *The Welfarization of Family Law*, 48 KAN. L. REV. 229, 269-71 (2000).

2. Hansen, *supra* note 1, at 148; see Sonya Salamon, *From Hometown to Non-town: Rural Community Effects of Suburbanization*, 68 RURAL SOC. 1, 3 (2003) (citing DAVID. M. HUMMON, *COMMONPLACES: COMMUNITY IDEOLOGY AND IDENTITY IN AMERICAN CULTURE* 57 (1990)) (observing "national ideology" that small towns are good places to raise children); Ann R. Tickamyer & Debra A. Henderson, *Rural Women: New Roles for the New Century?*, in CHALLENGES FOR RURAL AMERICA IN THE TWENTY-FIRST CENTURY 109, 112 (David L. Brown & Louis E. Swanson eds., 2004) (describing rural communities as "wholesome, family-friendly environments that promote overall well-being"); see also W.K. KELLOGG FOUND., *PERCEPTIONS OF RURAL AMERICA: CONGRESSIONAL PERSPECTIVES* 3-4 (2004), available at <http://www.wkkf.org/knowledge-center/resources/2004/04/Perceptions-Of-Rural-America-Views-From-The-US-Congress.aspx> (finding most people associate the word "rural" with traditional values such as family, community, and religion).

3. See Hansen, *supra* note 1, at 148.

4. See *id.*; J. Brian Brown & Daniel T. Lichter, *Poverty, Welfare, and the Livelihood Strategies of Nonmetropolitan Single Mothers*, 69 RURAL SOC. 282, 293-94 (2004) (providing statistics that "make it clear that it is dangerous to assume nonmetro single mothers can rely on stronger extended family support and kinship ties").

5. See Lisa R. Pruitt, *Gender, Geography and Rural Justice*, 23 BERKELEY J. GENDER L. & JUST. 338, 361-62 (2008) [hereinafter Pruitt, *Rural Justice*] (collecting sources).

6. See RALPH A. WEISHEIT ET AL., *CRIME AND POLICING IN RURAL AND SMALL-TOWN AMERICA* 2-3 (2d ed. 1999) ("In the minds of many, the crime problem is, by definition, an urban problem. It is assumed that rural crime is rare or nonexistent – that when it does occur, it is only a 'small' version of the urban crime problem."); see also W.K. KELLOGG FOUND., *supra* note 2, at 3-4 (noting that legislators who grew up in rural places emphatically asserted "that people are more likely to know each other

Despite such nostalgic images of rural America,⁷ structural challenges prevent many rural families from flourishing.⁸ Compared to their metropolitan counterparts, nonmetropolitan families are more likely to live in poverty⁹ and to face unemployment or under-employment.¹⁰ Declining populations,

and take care of each other” which “makes rural communities more nurturing than urban or suburban areas”).

7. See Daniel T. Lichter, Vincent J. Roscigno & Dennis J. Condran, *Rural Children and Youth at Risk*, in CHALLENGES FOR RURAL AMERICA IN THE TWENTY-FIRST CENTURY, *supra* note 2, at 97, 100, 108; Cynthia B. Struthers & Janet L. Bokemeier, *Myths and Realities of Raising Children and Creating Family Life in a Rural County*, 21 J. FAM. ISSUES 17, 20 (2000); Lisa R. Pruitt, *Rural Rhetoric*, 39 CONN. L. REV. 159, 168-72 (2006); see also W.K. KELLOGG FOUND., PERCEPTIONS OF RURAL AMERICA 7 (2004), available at <http://ww2.wkcf.org/pubs/FoodRur/Pub2973.pdf>.

8. See generally ECONOMIC RESTRUCTURING AND FAMILY WELL-BEING IN RURAL AMERICA (Kristin E. Smith & Ann R. Tickamyer eds., 2011) (documenting the particular challenges that economic restructuring has posed for rural families since the last quarter of the 20th century and criticizing government’s failure to address these challenges); Debra Lyn Bassett, *Distancing Rural Poverty*, 13 GEO. J. ON POVERTY L. & POL’Y 3, 9-10 (2006) (discussing the relationship between poverty, place and the prevalence of rural poverty); Theresa D. Legere, Note, *Preventing Judicially Mandated Orphans*, 38 FAM. & CONCILIATION CTS. REV. 260, 263 (2000) (citing Elizabeth D. Jones & Karen McCurdy, *National Committee for the Prevention of Child Abuse: The Links Between Types of Maltreatment and Demographic Characteristics of Children*, 16 CHILD ABUSE & NEGLECT 201 (1992)) (citing studies showing that “families living in poverty must worry about how to attain necessities such as food, clothes, health care, and shelter”).

9. See THE ANNIE E. CASEY FOUND., STRENGTHENING RURAL FAMILIES: THE HIGH COST OF BEING POOR 1 (2004), available at <http://www.aecf.org/upload/publicationfiles/rf2022k560.pdf>; U.S. DEP’T AGRIC. ECON. RES. SERV., ECONOMIC INFORMATION BULL. NO. 1, RURAL CHILDREN AT A GLANCE 1 (2005), available at <http://www.ers.usda.gov/publications/EIB1/EIB1.pdf>; *Rural Income, Poverty, and Welfare: Poverty Geography*, U.S. DEP’T AGRIC. ECON. RES. SERV. <http://www.ers.usda.gov/Briefing/IncomePovertyWelfare/PovertyGeography.htm> (last modified Sept. 17, 2011). The nonmetro poverty rate was at a record-low of 13.4% in 2000, but the 2010 nonmetro poverty rate was 16.5%. *Id.* Additionally, between 2008 and 2010, 600,000 additional nonmetro residents fell below the poverty line. *Id.* Metro poverty rates between 2000 and 2009 were 2.7 percentage points lower than nonmetro; however, in 2010, the metro poverty rate was 14.9%, just 1.6% below the nonmetro rate. *Id.*

10. See Leif Jensen, Diane K. McLaughlin & Tim Slack, *Rural Poverty: The Persisting Challenge*, in CHALLENGES FOR RURAL AMERICA IN THE TWENTY-FIRST CENTURY, *supra* note 2, at 118, 125; Diane K. McLaughlin & Alisha J. Coleman-Jensen, *Nonstandard Employment in the Nonmetropolitan United States*, 73 RURAL SOC. 631, 632 (2008) (documenting extent to which nonmetro workers are involved in contingent work, part-time work, variable-hour work, or are otherwise without healthcare insurance and other benefits associated with good jobs); Pruitt, *Rural Justice*, *supra* note 5, at 350-51 (collecting sources); Anastasia R. Snyder & Diane K.

eroding infrastructure, and economic instability plague many rural locales.¹¹ Further, rural spatiality contributes to families' immobility, making it difficult for them to gain access to public services and also to move to places with more services to offer.¹² A rural parent attempting to care for her children may find that inadequate housing, a dearth of acceptable and affordable childcare, and limited transportation options hamper her efforts.¹³

When rural parents struggle, their neighbors and communities judge them – and so may the state. When law and legal institutions judge rural parents, those parents may find their parental rights terminated in decisions in which place-related scrutiny plays a role. That scrutiny implicates a range of issues, from the physical characteristics of the parents' dwelling to its geographic location.¹⁴

This Article considers the role of place in the termination of parental rights in rural and nonmetropolitan contexts and offers three critiques of the state's intervention in disadvantaged rural families. First, many states assert that poverty alone is not a legitimate reason for removing a child or terminating parental rights, but in practice children often are removed from their parents solely on that basis. Other scholars have made this point, but we focus on the particular impact on rural families due to high nonmetropolitan poverty rates and the added challenges that rural spatiality and its social consequences pose for these families. As a related matter, we assert that courts sometimes use rurality as a proxy for poverty to justify child removal and termination of parental rights when law forbids such actions based on poverty

McLaughlin, *Female-Headed Families and Poverty in Rural America*, 69 RURAL SOC. 127, 141-43, 146 (2004).

11. Lisa R. Pruitt, *Missing the Mark: Welfare Reform and Rural Poverty*, 10 J. GENDER RACE & JUST. 439, 446 (2007) [hereinafter Pruitt, *Missing the Mark*] (collecting sources); see generally Ann R. Tickamyer & Kristen E. Smith, *Conclusions, in ECONOMIC RESTRUCTURING*, *supra* note 8, at 336, 339 (discussing the structural obstacles to rural families' flourishing).

12. See *infra* Part IV.B.

13. See *infra* Parts III-IV; see also generally Lisa R. Pruitt, *Rural Families and Work-Family Issues*, SLOAN WORK & FAM. ENCYCLOPEDIA (2008), http://wfnetwork.bc.edu/encyclopedia_entry.php?id=15186&area=All [hereinafter Pruitt, *Rural Families and Work-Family Issues*]. Issues of transportation and access to resources also arise for rural families in relation to child custody disputes and child abuse investigations. See Elizabeth Barker Brandt, *The Challenge to Rural States of Procedural Reform in High Conflict Custody Cases*, 22 U. ARK. LITTLE ROCK. L. REV. 357, 357-58, 371 (2000); Victor I. Vieth, *In My Neighbor's House: A Proposal to Address Child Abuse in Rural America*, 22 HAMLINE L. REV. 143, 166 (1998).

14. Jennifer Sherman observes that rural parents may not actually "choose" their residence because they may inherit the home in which they live. See JENNIFER SHERMAN, *THOSE WHO WORK, THOSE WHO DON'T: POVERTY, MORALITY, AND FAMILY IN RURAL AMERICA* 39, 184 (2009). The attachment to place associated with rural livelihoods also influences rural families' decisions to live where they do. See Pruitt, *Rural Justice*, *supra* note 5, at 344, 355, 361-63.

alone. Second, we observe that courts sometimes make decisions based on rural stereotypes, and these decisions may disserve rural families. Third, and in a similar vein, courts sometimes fail to account for rural realities when making child welfare decisions about populations and circumstances with which they may be less familiar.

All of these critiques call particular attention to the plight of rural families, whom – like rural people and places more generally – the increasingly metrocentric realm of legal scholarship often overlooks.¹⁵ Our goal is not to present a direct comparison of rural and urban, nor to say that rural hardship is necessarily worse than urban hardship. Rather, our goal is to identify and draw attention to rural difference and associated disadvantages. Our argument that the state should play a greater role in supporting families – that the state should use its role as *parens patriae* more robustly as a shield to protect families and less often as a sword to dismember them – applies to all families.¹⁶ The particular forms that support should take, however, may vary with geography.

15. See Katherine Porter, *Going Broke the Hard Way: The Economics of Rural Failure*, 2005 WIS. L. REV. 969, 970 (2005); Lisa R. Pruitt, *Taking Rural People Seriously. Not.*, SALT LAW BLOG (June 26, 2010), <http://www.saltlaw.org/blog/2010/06/26/taking-rural-people-seriously-not/> (discussing the absence of rural people and places from legal scholarship).

16. The state has the power to regulate children and the family. *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944). However, “that power is mostly ‘residual’ in practice because the State typically defers to the family, which is viewed as a private institution.” Lisa R. Pruitt, *Spatial Inequality as Constitutional Infirmity: Equal Protection, Child Poverty and Place*, 71 MONT. L. REV. 1, 88-91 (2010) [hereinafter Pruitt, *Spatial Inequality*] (collecting sources); see Martha L. A. Fineman, *Taking Children’s Interests Seriously*, in CHILD, FAMILY, AND STATE, 234-35 (Stephen Macedo & Iris Marion Young eds., 2003); see also Daan Braveman, *Children, Poverty and State Constitutions*, 38 EMORY L.J. 577, 607 (1989) (listing some pro-active or offensive uses to which doctrine of *parens patriae* has been put, including to terminate parental rights, to involuntarily commit children, to approve petition for sterilization, and to suppress child pornography); Barbara B. Woodhouse, *A Public Role in the Private Family: The Parental Rights and Responsibilities Act and the Politics of Child Protection and Education*, 57 OHIO ST. L.J. 393, 393-94 (1996); *Interview: Martin Guggenheim*, PBS FRONTLINE, <http://www.pbs.org/wgbh/pages/frontline/shows/fostercare/inside/guggenheim.html> (last visited Dec. 14, 2010) (referring to decision to remove children rather than provide assistance to family as a “residual outcome of a political choice . . . not to help families directly”); see generally MAXINE EICHNER, *THE SUPPORTIVE STATE: FAMILIES, GOVERNMENT AND AMERICA’S POLITICAL IDEALS* 11 (2010) (asserting that “state support should be seen as appropriate not only after families ‘fail,’ . . . but should be considered an integral part of the state’s responsibilities”); *id.* at 12 (arguing that the state should at minimum “arrange institutions in such a way that family members can, through exercising diligent, but not Herculean, efforts meet the basic physical, mental, and emotional needs of children and other dependents without being impoverished or having their emotional well-being threatened.”); *id.* at 79, 87-90 (arguing that the supportive state would

Several of the issues that we discuss in this Article are depicted in the award-winning 2010 film, *Winter's Bone*.¹⁷ In it, seventeen-year-old Ree Dolly struggles to feed her young siblings after her father, Jessup – out on bail after being charged with drug offenses – goes missing, and their ill mother languishes.¹⁸ Living in the run-down family home in the rural Missouri Ozarks, Ree teaches her siblings how to hunt squirrels, and she accepts the intermittent assistance of neighbors, who, for example, provide a slab of venison.¹⁹ Ree manages to keep her siblings fed and clothed and even oversees their homework.²⁰ The state does not appear to be present in the lives of the Dolly family except in the person of the county sheriff, who informs Ree that Jessup put the family home up for security with the bail bondsman; she and her family will lose the home unless someone finds Jessup.²¹

Despite her dire circumstances, the film never hints that Ree contemplates seeking public assistance, even when the children are hungry.²² Why

alleviate poverty by guaranteeing a minimum standard of living); *id.* at 119 (“Instead of strong-arming families after a crisis has occurred, the state seeks to partner with parents so that families are less vulnerable to crises in the first place”). Jennifer Hendricks characterizes Eichner’s position on the current role of the state thusly: “The status quo could as easily be described as actively undermining families rather than as a neutral regime.” Jennifer S. Hendricks, *Renegotiating the Social Contract*, 110 MICH. L. REV. (forthcoming 2012) (manuscript at 12) (available at ssrn.com) (reviewing EICHNER, *THE SUPPORTIVE STATE*); see also DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* 104-20 (2002); Clare Huntington, *Mutual Dependency in Child Welfare*, 82 NOTRE DAME L. REV. 1485, 1493 (2007) [hereinafter Huntington, *Mutual Dependency*] (“A truly effective child welfare system, however, would seek to prevent child abuse and neglect, thus limiting the number of families who enter the system.”); Clare Huntington, *Rights Myopia in Child Welfare*, 53 UCLA L. REV. 637, 656-63 (2006) [hereinafter Huntington, *Rights Myopia*]; Michael Wald, *State Intervention on Behalf of “Neglected” Children: A Search for Realistic Standards*, 27 STAN. L. REV. 985, 998, 1004-05 (1975) (arguing that few families can provide each child with the “best available opportunity to fulfill his potential in society as a civilized human being,” and intervention is justified only when specific harms may be suffered by a child). Wald notes that child welfare programs do not include “guaranteeing all families adequate income to assure that all children can receive basic nutritional and medical care, adequate housing, or any of the other advantages we would like parents to provide,” despite strong correlation between poverty and neglect. *Id.* at 999-1000. Wald suggests that, when possible, states should assist families in providing adequately for children rather than intervening coercively. *Id.* at 1037.

17. WINTER’S BONE (Winter’s Bone Productions & Anonymous Content 2010). The film is based on the novel *Winter’s Bone* by Daniel Woodrell. See DANIEL WOODRELL, *WINTER’S BONE: A NOVEL* (2006).

18. WINTER’S BONE (Winter’s Bone Productions & Anonymous Content 2010).

19. *Id.*

20. *Id.*

21. *Id.*

22. See *id.*

not? One reason, surely, is fear of child protective services and the consequences of bringing her family under the state's scrutiny. Among other things, this Article offers an alternative vision of the state's role in the lives of families like Ree's, a supportive role that responds to various aspects of their disadvantage – both socio-spatial and economic.

Part II of this Article reviews the processes and effects associated with termination of parental rights. It also discusses reunification policies and practices. Part III views termination through the dual lenses of poverty and rurality, arguing that rural families face appreciable and distinct obstacles due in part to spatial inequalities in the availability of government services. Part IV illustrates the problem by discussing termination cases in rural contexts. Part V offers suggestions for place-specific policies that would strengthen rural families and foster reunification after the state has removed children from the home.

II. A PRIMER ON TERMINATION OF PARENTAL RIGHTS

The right to the care, custody, upbringing, education, and nurturing of one's child is a fundamental,²³ constitutional,²⁴ and essential²⁵ right. While a parent enjoys a presumption of parental prerogative,²⁶ parental rights are not absolute and must be balanced against the government's interest in protecting

23. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (“The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.”); see UTAH CODE ANN. § 78A-6-503(2) (West, Westlaw current through 2011 2d Spec. Sess.) (“Wherever possible family life should be strengthened and preserved . . .”); *Lassiter v. Dep’t of Soc. Servs.*, 452 U.S. 18, 27 (1981) (holding that “a parent’s desire for and right to ‘the companionship, care, custody and management of his or her children’ is an important interest that ‘undeniably warrants deference and, absent a powerful countervailing interest, protection.’” (quoting *Stanley v. Illinois*, 405 U.S. 645, 651 (1972))).

24. See U.S. CONST. amend. XIV, § 1; *Santosky*, 455 U.S. at 753 (“The absence of dispute reflected this Court’s historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment.”); *Wright v. Alexandria Div. of Soc. Servs.*, 433 S.E.2d 500, 505 (Va. Ct. App. 1993) (“The Due Process Clause of the Fourteenth Amendment guarantees a parent’s liberty interest in ‘the companionship, care, custody and management of his or her children.’” (quoting *Stanley*, 405 U.S. at 651-52)).

25. *Stanley*, 405 U.S. at 651 (stating that “[t]he rights to conceive and to raise one’s children have been deemed ‘essential’” (quoting *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923))).

26. *Tyrrell v. Tyrrell*, 415 N.Y.S.2d 723, 251 (N.Y. App. Div. 1979), *aff’d*, 393 N.E.2d 1041 (1979); *Com. ex rel. Holschuh v. Holland-Moritz*, 292 A.2d 380, 383 (Pa. 1972); *Patrick v. Byerley*, 325 S.E.2d 99, 101 (Va. 1985); *Mawhinney v. Mawhinney*, 225 N.W.2d 501, 503 (Wis. 1975).

children.²⁷ The state retains the right to intervene, alter, and even sever familial relationships when it deems a child is at risk.²⁸

The termination of parental rights is a severe action that divests a parent of all rights and privileges regarding the child, thereby severing the parent-child relationship.²⁹ Due to the final nature of a termination ruling, the Supreme Court has referred to it as an “awesome authority of the State.”³⁰ Other courts have described termination as “the family law equivalent of the death penalty.”³¹

In 2008 alone, 75,000 American children became judicially mandated orphans.³² The state terminated the rights of their natural parents in court proceedings, and the children became wards of the state.³³ In some cases, termination was a necessary measure, rescuing the child from physical or emotional abuse – and possibly from death. In many cases, however, termination was part of a disturbing trend in which the state removed children from the home and terminated parental rights, essentially because the parents were guilty of being poor.³⁴

A. The Initial Removal

Child welfare agencies become involved in families’ lives in various ways. Some parents agree to relinquish their parental rights on a temporary

27. *Wright*, 433 S.E.2d at 505 (citing *Lassiter*, 452 U.S. at 27).

28. *See Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); *Davis v. Smith*, 583 S.W.2d 37, 40 (Ark. 1979) (in banc).

29. *See, e.g., J.C. v. State Dep’t of Human Res.*, 986 So.2d 1172, 1208 (Ala. Civ. App. 2007); *McCabe v. McCabe*, 78 P.3d 956, 958 (Okla. 2003).

30. *M.L.B. v. S.L.J.*, 519 U.S. 102, 128 (1996).

31. *In re Smith*, 601 N.E.2d 45, 55 (Ohio Ct. App. 1991); *see also In re K.A.W.*, 133 S.W.3d 1, 12 (Mo. 2004) (en banc) (referring to it as “tantamount to a ‘civil death penalty’” (quoting *In re N.R.C.*, 94 S.W.3d 799, 811 (Tex. App. 2002))).

32. U.S. DEP’T OF HEALTH & HUMAN SERVS., AFCARS REPORT – PRELIMINARY FY 2008 ESTIMATES AS OF OCTOBER 2009 (2009), *available at* http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report16.htm; Legere, *supra* note 8, at 260 (using term “judicially mandated orphans” to describe children who are not subsequently adopted following termination of their parents’ rights).

33. *See Legere, supra* note 8, at 260.

34. *See DUNCAN LINDSEY, THE WELFARE OF CHILDREN* 155 (1994) (finding the “inadequacy of income, more than any other factor, constitutes the reason that children are removed”). “Poverty – not the type or severity of maltreatment – is the single most important predictor of placement in foster care and the amount of time spent there.” ROBERTS, *supra* note 16, at 27. “Rather than operating as a *de jure* defense against neglect, [poverty] works as a *de facto* enhancement of parental culpability.” *Id.* at 38. Mary Keegan Eamon & Sandra Kopels, ‘For Reasons of Poverty’: Court Challenges to Child Welfare Practices and Mandated Programs, 26 CHILD. & YOUTH SERVICES REV. 821, 821-22 (2004).

basis in order to overcome economic, physical, or personal hardship.³⁵ In other instances, outsiders who suspect child abuse or neglect make reports to child welfare agencies.³⁶ Initial removal by an agency requires a balancing of the risks and benefits of removing the child from the home, a practice that can be highly subjective.³⁷ Most states require agencies to analyze the risk of harm present in the home.³⁸ Removal is warranted if the perceived risk level rises to a certain threshold, but that threshold is ill defined.³⁹ Some state laws permit removal of a child if the risk level is assessed as “imminent”⁴⁰ or “se-

35. See Eamon & Kopels, *supra* note 34, at 825.

36. *Id.*

37. Bruce A. Boyer & Amy E. Halbrook, *Advocating for Children in Care in a Climate of Economic Recession: The Relationship Between Poverty and Child Maltreatment*, 6 NW. J.L. & SOC. POL’Y 300, 305 (2011).

38. See ARIZ. REV. STAT. ANN. § 8-824(F) (Westlaw through 1st Reg. Sess. and 3d. Spec. Sess. of the 50th Legis.); ARK. CODE ANN. § 12-18-1006 (LEXIS through 2011 Reg. Sess. and updates); D.C. CODE § 16-2310(a)(1) (Supp. 2011); GA. CODE ANN. § 15-11-44 (LEXIS through 2011 Extraordinary Sess.); LA. CHILD. CODE ANN. art. 619(A) (Westlaw through 2011 1st Extraordinary Sess. and 2011 Reg. Sess.); MICH. COMP. LAWS SERV. § 712A.13a(5) (LexisNexis, LEXIS through 2011 P.A. 140); OHIO REV. CODE ANN. § 2151.31(A)(3) (West, Westlaw through 2011 Files 1 to 27, 29 to 47, and 49 of the 129th GA (2011-2012), apv. by 9/26/2011, and filed with the Secretary of State by 9/26/2011); R.I. GEN. LAWS § 40-11-7(c) (LEXIS through Jan. 2011 Sess.); S.C. CODE ANN. § 63-7-1660(A) (Westlaw through end of 2010 Reg. Sess.).

39. See ROBERTS, *supra* note 16, at 37-38 (noting that “[s]ome states acknowledge the unfairness of equating poverty with neglect by including an economic exemption in their child neglect statutes” and stating that “New York law, for example, defines a neglected child as one whose parent ‘does not adequately supply the child with food, clothing, shelter, education, or medical or surgical care, *though financially able or offered financial means to do so*’”); Boyer & Halbrook, *supra* note 37, at 305 (“Rational placement decisions must balance knowledge of the adverse effects of foster care against the risks associated with remaining at home.”); Wald, *supra* note 16, at 994 (asserting that children suffer psychological damage from forced removal from their family home and that damage may be greater than the damage removal is supposed to prevent).

40. CONN. GEN. STAT. ANN. § 46b-129(b) (West, Westlaw through 2011 Jan. Reg. Sess. and June Spec. Sess.); HAW. REV. STAT. § 587A-11 (West, Westlaw through Act 235 [End] of 2011 Reg. Sess.); 705 ILL. COMP. STAT. 405/2-10 (2008); IND. CODE ANN. § 31-34-2-3(a)(1) (West, Westlaw through 2011 1st Reg. Sess.); MD. CODE ANN., FAM. LAW § 5-709(a)(2) (West, Westlaw through 2011 Reg. Sess. of the General Assembly); MINN. R. JUVENILE PROT. P. 28.02; MO. REV. STAT. § 210.125.2 (2000); NEV. REV. STAT. ANN. § 432B.390(1)(a) (West, Westlaw through 2009 75th Reg. Sess. and 2010 26th Spec. Sess. of the Nev. Legis. and technical corrections received from the Legis. Council Bureau (2010)); N.H. REV. STAT. ANN. § 169-C:6(1) (Westlaw through Ch. 268 of 2011 Reg. Sess., not including changes and corrections made by the State of New Hampshire, Office of Legis. Services); N.J. STAT. ANN. § 9:6-8.32 (West, Westlaw through laws immediately effective through L.2011, c. 133 and J.R. No. 7); N.M. STAT. ANN. § 32A-4-18(c) (West, Westlaw through 1st Reg.

rious.”⁴¹ Other states authorize removal when they find a situation contrary to the child’s “welfare”⁴² or “best interests.”⁴³ Some states rely on a combination of these factors.⁴⁴

Despite the statutory requirements for removal, national studies of child protective service practices indicate that agencies often lack structured models or assessment procedures for justifying child removal.⁴⁵ Even when agen-

Sess. 2011); N.Y. FAM. CT. ACT § 1028 (McKinney, Westlaw through L.2011, ch. 1-54, 57-495); TENN. CODE ANN. § 37-1-404(a) (LEXIS through 2011 Reg. Sess.); VA. CODE ANN. § 16.1-252 (LEXIS through 2011 Reg. Sess., Acts 2011, cc. 1 to 890, and 2011 Spec. Sess. I, c. 1); W. VA. CODE ANN. § 49-6-3 (West, Westlaw through end of the 2011 2d Extraordinary Sess.).

41. ALA. CODE § 12-15-128 (Westlaw through end of 2011 Reg. Sess.); N.C. GEN. STAT. § 7B-503 (LEXIS through 2010 Reg. Sess.); WYO. STAT. ANN. § 14-3-405 (LEXIS through 2011 Reg. Sess. of Legis.).

42. ALASKA STAT. § 47.10.030(c) (LEXIS through 2010 Reg. Sess. of 26th Legis.); ME. REV. STAT. ANN. tit. 22, § 4036-B(2) (Supp. 2011); MISS. CODE ANN. § 43-21-309(4)(b) (LEXIS through 2011 Reg. Sess. and 1st Extraordinary Sess.); OKLA. STAT. ANN. tit. 10A, §§ 1-4-201, 2-2-201 (West, Westlaw through chapters of the 1st Reg. Sess. of the 53rd Legis. (2011) effective Aug. 26, 2011); 42 PA. CONS. STAT. ANN. § 6332(a) (West Supp. 2011); S.D. CODIFIED LAWS § 26-8A-21 (Westlaw through 2011 Reg. Sess., Exec. Order 11-1, and S. Ct. R. 11-17).

43. COLO. REV. STAT. § 19-1-115(6) (LEXIS through all laws passed at 1st Reg. Sess. of the 68th Gen. Assemb. of the State of Co.); MASS. GEN. LAWS ANN. ch. 119, § 29C (West, Westlaw through Ch. 123, except for Ch. 93 and 115 of 2011 1st Annual Sess.); OR. REV. STAT. ANN. § 419B.150(2) (West, Westlaw through emergency legislation through Ch. 733 of the 2011 Reg. Sess.).

44. CAL. WELF. & INST. CODE § 319 (West, Westlaw through urgency legislation through Ch. 745 of 2011 Reg. Sess. and all 2011-2012 1st Ex. Sess. laws); DEL. FAM. CT. R. CIV. P. 212; FLA. STAT. § 39.402(h)(2)-(3) (2010); KY. REV. STAT. ANN. § 620.060 (West, Westlaw through end of 2011 Legis.); TEX. FAM. CODE ANN. § 262.107 (West 2008).

45. See PETER H. ROSSI ET AL., UNDERSTANDING CHILD MALTREATMENT DECISIONS AND THOSE WHO MAKE THEM 3-4 (1996), available at http://www.chapin.hall.org/sites/default/files/old_reports/51.pdf (finding that decisions regarding the safety of children vary significantly from worker to worker, even among those considered to be child welfare experts). Cases also illustrate this variability. See *In re Jeremy W.*, 5 Cal. Rptr. 2d 148, 153 (Cal. Ct. App. 1992) (reversing the lower court’s decision to terminate Mother’s parental rights after the lower court found that Mother has “worked diligently on her reunification plan, but she has not been able to sustain the psychological stability necessary in order to parent this minor on a day-to-day basis” and noting that “[t]he only stated basis for this conclusion was the single episode of difficult visitation some six months before the hearing” (internal quotation marks omitted)); *In re C.F.C.*, 156 S.W.3d 422, 428-29 (Mo. App. E.D. 2005) (stating that the trial court’s findings were “wholly inadequate to support the termination of [the] Mother’s parental rights” where the trial court, among other reasons, “failed to find that Mother’s failures to provide support or age-appropriate toys had or would interfere with her future ability to provide adequate food, clothing or shelter to any of her children while she had physical custody”); *In re C.C.*, 618 S.E.2d 813, 818 (N.C.

cies do follow a structured protocol, the protocol's reliability may be questionable. The problem of variation among case outcomes is aggravated when social workers have heavy caseloads and limited resources.⁴⁶

Once the state removes a child from the home, the child is placed in a temporary living situation with a relative, or in a foster home, group home, or other institution.⁴⁷ Federal law encourages the states to make concurrent plans, to attempt to reunify the parent with the child while simultaneously seeking alternative living arrangements in the event reunification fails.⁴⁸ This practice undermines any genuine pursuit of family reunification⁴⁹ because the state is hedging its bets.

Ct. App. 2005) (stating that "DSS presented no evidence that [Mother] could not, at the time of the hearing, adequately parent her children" and "no evidence was presented and no finding was made that a probability of repetition of neglect existed at the time of the termination hearing").

46. See Christopher Baird & Dennis Wagner, *The Relative Validity of Actuarial- and Consensus-Based Risk Assessment Systems*, 22 CHILD. & YOUTH SERVICES REV. 839, 841 (2000) (stating that historically, caseworkers have relied on "clinical experience, interviewing skills, and intuition to estimate the risk of abuse or neglect" to children); *id.* at 867 (finding that the lack of consistent assessments between caseworkers may affect the validity of clinical judgments); Virginia M. DeRoma, Maria Lynn Kessler, Ryan McDaniel & Cesar M. Soto, *Important Risk Factors in Home-Removal Decisions: Social Caseworker Perceptions*, 23 CHILD & ADOLESCENT SOC. WORK J. 263, 266 (2006) [hereinafter DeRoma et al.], available at <http://www.springerlink.com/content/137404751r215163/fulltext.pdf> (observing that even structural procedures may be overridden by some degree of subjectivity by caseworkers who have high caseloads and tight time constraints for making decisions, and who may lack experience and/or formal education in the field of social work); Amy Sinden, "Why Won't Mom Cooperate?": A Critique of Informality in Child Welfare Proceedings, 11 YALE J.L. & FEMINISM 339, 380 (1999) ("The danger that prejudice or incomplete or unreliable information will distort decisions is particularly acute in the emotionally-charged arena of dependency and termination cases. Where so much is at stake . . . the players in the system are all the more likely to make snap judgments based on gut feelings and instinct and to cut corners in an attempt to manipulate decisions to conform to their own view of the right outcome.").

47. See Theo Liebmann, *What's Missing from Foster Care Reform? The Need for Comprehensive, Realistic, and Compassionate Removal Standards*, 28 HAMLIN J. PUB. L. & POL'Y 141, 144-45, 148 (arguing that standards for removal are neither comprehensive nor compassionate and that the "decision to remove a child is made in a vacuum utterly devoid of . . . very real facts").

48. U.S. DEP'T OF HEALTH AND HUMAN SERVS., CONCURRENT PLANNING: WHAT THE EVIDENCE SHOWS 2 (2005), available at http://www.childwelfare.gov/pubs/issue_briefs/concurrent_evidence/concurrent_evidence.pdf. See also *infra* notes 59-67 and accompanying text (discussing ASFA).

49. See ROBERTS, *supra* note 16, at 111 (noting that ASFA's "concurrent permanency planning," a policy that places foster children on two tracks simultaneously (one towards permanent adoption and the other toward family reunification) leaves caseworkers conflicted and intensifies the conflict within the child welfare system).

B. Reunification

The federal government asserts that reunifying child and parent is, in most instances, the desired outcome.⁵⁰ The federal Adoption Assistance and Child Welfare Act of 1980 (AACWA) requires states to make reasonable efforts to reunify families disrupted by social services interventions.⁵¹ To encourage states to implement alternatives to removal-only strategies, the Act offers federal funding for efforts to reunify families.⁵² Additionally, many state statutes require that state agencies make reasonable efforts to reunify parents with their children.⁵³

In spite of these incentives, some states treat a parent's inability to comply with a reunification plan as *prima facie* evidence that returning the child to the parent would be detrimental.⁵⁴ As Professor Dorothy Roberts points out in her germinal book, *Shattered Bonds: The Color of Child Welfare*, reunification plans leave the state focusing on whether the parent has complied with a lengthy checklist of actions rather than on whether the parent is able to care for the child.⁵⁵ Roberts writes:

The issue is no longer whether the child may be safely returned home, but whether the mother has attended every parenting class, made every urine drop, participated in every therapy session, shown up for every scheduled visitation, arrived at every appointment on time, and always maintained a contrite and cooperative disposition. . . .

Sometimes permanency plans are so complicated or onerous that they seem designed to ensure failure.⁵⁶

Roberts explains that such plans are not only subjective, they are not centered on children's well-being.⁵⁷ Further, they leave little room for consideration of context.⁵⁸

50. DeRoma et al., *supra* note 46, at 265; Eamon & Kopels, *supra* note 34, at 821.

51. 42 U.S.C. § 671(a)(15) (2006).

52. *Id.*

53. *See, e.g.*, TEX. FAM. CODE ANN. § 262.201(b)(2) (West Supp. 2011).

54. *See, e.g.*, CAL. WELF. & INST. CODE § 366.21(e) (West, Westlaw through urgency legislation through Ch. 745 of 2011 Reg. Sess. and all 2011-2012 1st Ex. Sess. laws); UTAH CODE ANN. § 78A-6-314(2)(c) (West, Westlaw through 2011 2d Spec. Sess.).

55. *See* ROBERTS, *supra* note 16, at 80-81.

56. *Id.*

57. *See id.* at 74.

58. *See id.* at 80-81; *see also* cases discussed *infra* note 80.

Although AACWA remains in effect, the 1997 Adoption and Safe Families Act (ASFA) signaled a change in policy, in particular a shift away from preventive and reunification programs.⁵⁹ ASFA did not displace the AACWA requirement that the state make “reasonable efforts” to keep families together.⁶⁰ Indeed, ASFA contains a “Preservation of Reasonable Parenting” provision which asserts that the state should not “unnecessarily” disrupt or “inappropriately” interfere with family life.⁶¹ Yet ASFA’s goal of minimizing the amount of time children remain in limbo by quickly placing them in permanent homes tends to undercut efforts at reunification.⁶²

At first blush, it is easy to agree with ASFA’s supporters. The instability of temporary and multiple stints in foster care is detrimental to children.⁶³ When Congress enacted ASFA, proponents of the law claimed that the prior legal regime prioritized parental rights over the interests of children⁶⁴ and that ASFA would “elevate children’s rights so that a child’s health and safety will be of paramount concern under the law.”⁶⁵ One problem with ASFA, however, is that it pits parental rights against child well-being, rather than framing the two as intertwined.⁶⁶ In addition, ASFA’s shorter deadlines, financial

59. ROBERTS, *supra* note 16, at 105 (ASFA’s “orientation has shifted from emphasizing the reunification of children in foster care with their biological families toward support for the adoption of these children into new families.”).

60. 42 U.S.C. § 671(a)(15) (2006).

61. OLIVIA GOLDEN & JENNIFER MACOMBER, INTENTIONS AND RESULTS: A LOOK BACK AT THE ADOPTION AND SAFE FAMILIES ACT 9 (2009), *available at* http://www.urban.org/UploadedPDF/1001351_safe_families_act.pdf (“ASFA itself included a provision entitled ‘Preservation of Reasonable Parenting,’ which clarified that nothing in the Act was intended to . . . prohibit reasonable parental discipline, or prescribe a method of acceptable parenting.”).

62. *Id.* at 8 (“These [goals] include making the child welfare system responsive to ‘a child’s sense of time,’ ending children’s experience of ‘drifting’ in foster care so they may grow up in permanent families, and ensuring that children’s safety is paramount in case decision making.”).

63. *See* WENDY A. WALSH & MARYBETH J. MATTINGLY, CARSEY INST., LONG-TERM FOSTER CARE – DIFFERENT NEEDS, DIFFERENT OUTCOMES (2011), *available at* <http://www.carseyinstitute.unh.edu/publications/IB-Walsh-Long-Term-Foster-Care.pdf> (discussing foster care’s association with behavioral and emotional problems); Huntington, *Rights Myopia*, *supra* note 16, at 662 (discussing problems generally associated with foster care).

64. ROBERTS, *supra* note 16, at 107; *see* GOLDEN & MACOMBER, *supra* note 61, at 9 (“To proponents, ASFA restored a balance, which had tilted too far towards parents’ autonomy and away from the needs of children, causing them to be left at home with adults who injured or even killed them.”).

65. ROBERTS, *supra* note 16, at 107 (quoting 143 CONG. REC. H10789 (daily ed. Nov. 13, 1997) (statement of Rep. Pryce)).

66. *Id.* at 108 (“ASFA supporters placed children’s right to be safe in opposition to parents’ right to custody of their children.”); *id.* (asserting a “commonality of interests” between children and parents in promoting family preservation).

incentives for states to promote adoption, and “concurrent permanency planning” encourage states to take actions that undermine family preservation efforts.⁶⁷

C. Grounds for Termination

When reunification fails, the state typically seeks to terminate parental rights.⁶⁸ To achieve termination, the state must provide compelling proof of either child maltreatment or parental unfitness.⁶⁹ The statutory grounds for terminating a parent’s rights vary from state to state,⁷⁰ but they may include

67. *Id.* at 109-11, 143 (noting ASFA offers states no incentives to achieve family reunification and that “Congress did nothing to strengthen state reunification services”).

68. See Jennifer Ayres Hand, Note, *Preventing Undue Terminations: A Critical Evaluation of the Length-of-Time-Out-of-Custody Ground for Termination of Parental Rights*, 71 N.Y.U. L. REV. 1251, 1278 (1996).

69. See *Prince v. Massachusetts*, 321 U.S. 158, 169-70 (1944); *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 403 (1923).

70. See ALA. CODE § 12-15-319 (Westlaw through End of 2011 Reg. Sess.); ALASKA STAT. §§ 47.10.011, .080, .086, .088 (LEXIS through 2010 Reg. Sess. of the 26th State Legis.); ARIZ. REV. STAT. ANN. § 8-533 (Westlaw through 1st Reg. Sess. and 3d Spec. Sess. of the 50th Legis. (2011)); ARK. CODE ANN. § 9-27-341 (LEXIS through 2011 Reg. Sess.); CAL. WELF. & INST. CODE §§ 361.5, 366.26 (West, Westlaw through urgency legislation through Ch. 745 of 2011 Reg. Sess. and all 2011-2012 1st Ex. Sess. laws); COLO. REV. STAT. § 19-3-604 (LEXIS through all laws passed at 1st Reg. Sess. of the 68th Gen. Assem. of the State of Colo.); CONN. GEN. STAT. ANN. §§ 17a-111a, -111b, -112 (West, Westlaw through 2011 Jan. Reg. Sess. and June Spec. Sess.); DEL. CODE ANN. tit. 13, § 1103 (2009); D.C. CODE §§ 16-2353, -2354 (2001); FLA. STAT. § 39.806 (2010); GA. CODE ANN. §§ 15-11-58, -94 (LEXIS through 2011 Extraordinary. Sess.); 19 GUAM CODE ANN. § 4303 (Westlaw through Pub. L. 31-074); HAW. REV. STAT. § 571-61 (West, Westlaw through Act 235 [End] of 2011 Reg. Sess.); IDAHO CODE ANN. § 16-2005 (LEXIS through 2011 Reg. Sess.); 705 ILL. COMP. STAT. ANN. §§ 405/1-2, 50/1 (West 2007); IND. CODE ANN. §§ 31-34-21-5.6, 31-35-2-4.5 (West, Westlaw through 2011 1st Reg. Sess.); IOWA CODE § 232.102, .111 to .112 (2006 & Supp. 2011) KAN. STAT. ANN. §§ 38-2269, -2271 (Supp. 2010); KY. REV. STAT. ANN. §§ 600.020, 610.127, 625.090 (West, Westlaw through end of 2011 Legis.); LA. CHILD. CODE ANN. art. 672.1, 1015 (Westlaw through 2011 1st Extraordinary Sess. and 2011 Reg. Sess.); ME. REV. STAT. ANN. tit. 22, § 4055 (Supp. 2010); MD. CODE ANN., FAM. LAW § 5-525.1 (West, Westlaw through 2011 Reg. Sess. of the Gen. Assemb.); MASS. GEN. LAWS ANN. ch. 119, §§ 26, 29C (West, Westlaw through Ch. 123, except for Ch. 93 and 115 of 2011 1st Annual Sess.); *id.* ch. 210, § 3; MICH. COMP. LAWS SERV. § 712A.19b (LexisNexis, LEXIS through 2011 P.A. 140); MINN. ANN. STAT. §§ 260.012, 260C.301 (West, Westlaw through end of the 2011 Reg. Sess.); MISS. CODE ANN. §§ 43-21-603, 93-15-103 (LEXIS through 2011 Reg. Sess. and 1st Extraordinary Sess.); MO. REV. STAT. § 211.447 (Supp. 2010); MONT. CODE ANN. §§ 41-3-423, -609 (Westlaw through all 2011 laws, and 2010 ballot measures); NEB. REV. STAT. ANN. § 43-292 (LexisNexis, LEXIS through 2011 102d

abandonment,⁷¹ cruelty,⁷² neglect,⁷³ substance abuse,⁷⁴ moral depravity,⁷⁵ criminal conviction,⁷⁶ and mental illness.⁷⁷ The state must establish parental

1st Sess.); NEV. REV. STAT. ANN. §§ 128.105-.106, 432B.393 (West, Westlaw through 2009 75th Reg. Sess. and the 2010 26th Spec. Sess. of the Nev. Legis. and technical corrections received from the Legis. Council Bureau (2010)); N.H. REV. STAT. ANN. §§ 169-C:24-a, 70-C:5 (Westlaw through Ch. 268 of 2011 Reg. Sess., not including changes and corrections made by the State of New Hampshire, Office of Legis. Svcs.); N.J. STAT. ANN. §§ 30:4C-11.2, -15 (West, Westlaw through laws immediately effective through L.2011, c. 133 and J.R. No. 7); N.M. STAT. ANN. §§ 32A-4-2, -28 (West, Westlaw through 1st Reg. Sess. of the 50th Legis. (2011)); N.Y. SOC. SERV. LAW §§ 358-a, 384-b (McKinney, Westlaw through L.2011, chapters 1 to 54 and 57 to 495); N.C. GEN. STAT. § 7B-1111 (LEXIS through 2010 Reg. Sess.); N.D. CENT. CODE §§ 27-20-02, -44 (LEXIS through 2011 Legis. Sess.); OHIO REV. CODE ANN. § 2151.414 (West, Westlaw through 2011 Files 1 to 27, 29 to 47, and 49 of the 129th GA (2011-2012), apv. by 9/26/2011, and filed with the Secretary of State by 9/26/2011); OKLA. STAT. ANN. tit. 10, §§ 1-4-904 to -906 (West, Westlaw through chapters of the 1st Reg. Sess. of the 53rd Legis. (2011) effective Aug. 26, 2011); OR. REV. STAT. ANN. §§ 419B.502, .504, .506, .508 (West, Westlaw through emergency legislation through Ch. 733 of the 2011 Reg. Sess.); 23 PA. CONS. STAT. ANN. § 2511 (West Supp. 2011); P.R. LAWS ANN. tit. 31, §§ 634a-634b (LEXIS through Dec. 2008); R.I. GEN. LAWS § 15-7-7 (LEXIS through Jan. 2011 Sess.); S.C. CODE ANN. § 63-7-2570 (Westlaw through End of 2010 Reg. Sess.); S.D. CODIFIED LAWS §§ 26-8A-26.1, -27 (Westlaw through 2011 Reg. Sess., Exec. Order 11-1, and Supreme Court Rule 11-17); TENN. CODE ANN. § 36-1-113 (LEXIS through 2011 Reg. Sess.); TEX. FAM. CODE ANN. §§ 161.001-.002, 161.007 (West 2008 & Supp. 2011); UTAH CODE ANN. §§ 78A-6-507 to -508 (West, Westlaw through 2011 2d Spec. Sess.); VT. STAT. ANN. tit. 15A, § 3-504 (LEXIS through 2011 Sess.); V.I. CODE ANN. tit. 5, § 2550 (LEXIS through Act 7268 of 2011 Reg. Sess.); VA. CODE ANN. § 16.1-283 (LEXIS through 2011 Reg. Sess., Acts 2011, cc. 1 to 890, and 2011 Spec. Sess. I, c. 1); WASH. REV. CODE ANN. §§ 13.34.132, .180 (West, Westlaw through all 2011 Legis.); W. VA. CODE ANN. § 49-6-5 (West, Westlaw through End of the 2011 2d Extraordinary Sess.); WIS. STAT. ANN. § 48.415 (West, Westlaw through 2011 Act 31, Acts 33 to 36, and Acts 38 to 44, published 08/23/2011); WYO. STAT. ANN. § 14-2-309 (LEXIS through 2011 Reg. Sess. of Legis.).

71. See ALA. CODE § 12-15-319 (“[t]hat the parents have abandoned the child”); N.J. STAT. ANN. §§ 30:4C-11.2, -15 (“parent has abandoned the child” (internal quotation marks omitted)).

72. See ARK. CODE ANN. § 9-27-341 (using the following to define aggravated circumstances: “juvenile has been abandoned, chronically abused, subjected to extreme or repeated cruelty, sexually abused, or a determination has been made by a judge that there is little likelihood that services to the family will result in successful reunification”); KAN. STAT. ANN. § 38-2269 (“conduct toward a child of a physically, emotionally or sexually cruel or abusive nature”).

73. See TENN. CODE ANN. § 36-1-113 (“Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household[.]”).

unfitness by clear and convincing evidence,⁷⁸ by linking a condition, deficit, or dysfunction to a person's current or future ability to function as a parent.⁷⁹ Courts also consider the best interests of the child, although states differ as to what types of evidence may be introduced and when in the process the state should introduce that evidence.⁸⁰ The following Part discusses the roles that

74. See ALA. CODE § 12-15-319 (“excessive use of alcohol or controlled substances, of [such] duration or nature as to render the parent unable to care for needs of the child”); COLO. REV. STAT. § 19-3-604 (“[e]xcessive use of intoxicating liquors or controlled substances . . . which affects the ability to care and provide for the child”); IOWA CODE ANN. § 232.116 (“The parent has a severe, chronic substance abuse problem and presents a danger to self or others . . .”).

75. GA. CODE ANN. § 15-11-94(b)(4)(A) (“The child is a deprived child . . . [due to t]he lack of proper parental care or control . . . [the] cause of deprivation is likely to continue or will not likely be remedied; and . . . [t]he continued deprivation will cause or is likely to cause serious physical, mental, emotional, or moral harm to the child.”); KAN. STAT. ANN. § 38-2269(b)(2) (“conduct toward a child of a physically, emotionally or sexually cruel or abusive nature”).

76. Some states consider incarceration or the length of incarceration as a factor without requiring proof or risk of harm to the child. See, e.g., ALA. CODE § 12-15-319(a)(4) (conviction of or imprisonment for a felony); ARK. CODE ANN. § 9-27-341(b)(3)(B)(viii); COLO. REV. STAT. § 19-3-604(1)(b)(III) (long-term confinement of the parent is a basis for finding a parent unfit); 750 ILL. COMP. STAT. 50/1 (2007) (stating that a parent may be unfit if depraved and containing a rebuttable presumption of depravity if parent convicted of at least three felonies and one of these convictions was within the last five years).

77. See ALA. CODE § 12-15-319(a) (“That the parents have . . . [e]motional illness, mental illness, or mental deficiency of the parent, or excessive use of alcohol or controlled substances, of [such] duration or nature as to render the parent unable to care for needs of the child.”); TENN. CODE ANN. § 36-1-113(i)(8) (LEXIS through 2011 Reg. Sess.) (“Whether the parent’s or guardian’s mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child.”).

78. *Santosky v. Kramer*, 455 U.S. 745, 747-48 (1982).

79. See *id.* at 748-49.

80. Compare *In re A.B.M.*, 17 S.W.3d 912, 917 (Mo. App. S.D. 2000) (stating that termination is proper when in “the children’s best interest and when it appears by clear, cogent and convincing evidence that one or more statutory grounds for termination exist”), with *In re Adoption of Snyder*, 996 P.2d 875, 877 (Mont. 2000) (holding that “courts must give primary consideration to the best interests of the child”). Some states mandate that the best interests of the child be considered only in “extraordinary circumstances.” See *Banks v. Banks*, 726 N.Y.S.2d 795, 796-97 (N.Y. App. Div. 2001) (citing cases and listing examples of “extraordinary circumstances,” including “prolonged separation, disruption of custody for a prolonged period of time and attachment of the child to the custodian, sibling separation, psychological bonding of the child to the custodian and potential harm to child, the biological parent’s abdication of parental rights and responsibilities and the child’s poor relationship with the biological parent” (internal citations omitted)). “Extraordinary circumstances is a threshold issue which must be determined before the court addresses the custodial

poverty and place play in state determinations of both parental fitness and a child's best interests.

III. POVERTY, RURALITY, AND TERMINATION

A. Poverty as Grounds for Termination

Poverty frequently plays a role in child removal and failed reunification,⁸¹ with studies indicating that “[o]nly when there is no adequate source of income are the children more likely to be removed, and at a very high rate.”⁸² As a related matter, Professor Dorothy Roberts has observed that “[p]arental income is a better predictor of removal from the home than is the severity of the alleged child maltreatment or the parents’ psychological makeup. . . . Child removal continues to relate more to saving children from poverty than protecting them from physical harm.”⁸³

Indeed, child protection agencies most frequently cite neglect, which is the failure of a parent to provide for the basic needs of the child,⁸⁴ “as the

arrangement that would be in the best interests of the child.” *Danzey v. Jones-Moore*, 863 N.Y.S.2d 761, 762 (N.Y. App. Div. 2008). Once a state has proved by clear and convincing evidence that the parent is unfit, the best interests of the child outweigh all other considerations in determining the child’s placement. *See, e.g., In re Christina V.*, 749 A.2d 1105, 1110, 1112 (R.I. 2000).

81. *See* Douglas J. Besharov, *Child Abuse Realities: Over-Reporting and Poverty*, 8 VA. J. SOC. POL’Y & L. 165, 183-85 (2000); Eamon & Kopels, *supra* note 34, at 821-23; Emerich Thoma, *The Confusion of Poverty with Neglect*, 10 ISSUES IN CHILD ABUSE ACCUSATIONS (1998), available at http://www.ipt-forensics.com/journal/volume10/j10_10_13.htm.

82. Thoma, *supra* note 81; *see* Besharov, *supra* note 81, at 183-85. *But see* Eamon & Kopels, *supra* note 34, at 823 (“The observed relations between poverty and official indications of child maltreatment, substitute care placement, a lower probability of family reunification, and a higher probability of reentry into out-of-home care might be causal. Alternatively, these relations might be explained by a variety of omitted variables such as parental values, mental illness, and substance abuse that correlate with poverty and also predict these outcomes.”).

83. ROBERTS, *supra* note 16, at 35. Roberts advocates addressing the root problem, poverty, and asserts that it would be cheaper and more productive for the state to provide resources to help families instead of removing children. *See id.*

84. Eamon & Kopels, *supra* note 34, at 823. Neglect may be frequently cited because courts give “neglect” a broad definition. *Cf. In re Appeal in Pima Cnty., Juv. Action No. S-111*, 543 P.2d 809, 818 (Ariz. Ct. App. 1975) (noting that Arizona defines “neglect” as “a situation in which the child lacks proper parental care necessary for his health, morals and well-being”). The court further notes that legal scholars define neglect similarly, stating that “child neglect connotes a parent’s conduct, usually thought of in terms of passive behavior, that results in a failure to provide for the child’s needs as defined by the preferred values of the community” and that these broadly written statutes “allow judges to examine each situation on its own facts.” *Id.*

primary reason children are removed from the custody of their parents.”⁸⁵ Data from 2008 show that 78.3% of child maltreatment reports indicated neglect, while 17.8% indicated physical abuse, 9.5% indicated sexual abuse, and 7.6% indicated psychological maltreatment.⁸⁶ Neglect may be manifest, for example, in malnutrition, failure to provide shelter, lack of adequate clothing, poor hygiene, inadequate health care, and lack of appropriate supervision.⁸⁷ However, these concerns also tend to be consequences of poverty, and they may reflect differing cultural values or community standards of care.⁸⁸ Historian Linda Gordon explains that “[p]overty is confused with neglect . . . because ‘[poverty] often comes packaged with depression and anger, poor nutrition and housekeeping, lack of education and medical care, leaving children alone, exposing children to improper influences.’”⁸⁹ This confusion leads to judgments that parents are unfit, even when they merely lack adequate resources to provide for their children.⁹⁰

(quoting SANFORD N. KATZ, *WHEN PARENTS FAIL: THE LAW’S RESPONSIBILITY TO FAMILY BREAKDOWN* 22, 64 (1971)).

85. Thoma, *supra* note 81; *see also* Laura Sullivan & Amy Walters, *Native Foster Care: Lost Children, Shattered Families*, NAT’L PUB. RADIO (Oct. 25, 2011), available at <http://www.npr.org/2011/10/25/141672992/native-foster-care-lost-children-shattered-families?ps=cprs> (discussing the conflation of poverty and neglect in the context of removal and termination proceedings).

86. U.S. DEP’T OF HEALTH & HUMAN SERVS., *CHILD MALTREATMENT 2009*, at 23 fig.3-4 (2010), available at <http://www.acf.hhs.gov/programs/cb/pubs/cm09/cm09.pdf> (also reporting 9.6% “other” and 2.4% medical neglect).

87. *See* Legere, *supra* note 8, at 260 (noting that “poverty is by far the most prevalent cause for the finding of child maltreatment”). Legere notes that “a delay in getting health care is considered neglect, but in reality, the delay may reflect a lack of insurance, transportation, or access to a clinic (often only available during parents’ working hours). *Id.* at 265 (citing ARLOC SHERMAN, *WASTING AMERICA’S CHILDREN: THE CHILDREN’S DEFENSE FUND REPORT ON THE COSTS OF CHILD POVERTY* 86-87 (1994)). Legere also observes that

[f]ailure-to-thrive cases are also considered evidence of neglect. Failure to thrive is caused by conditions that reflect many symptoms of poverty, such as lack of healthy food, parental stress, and noisy, distracting living conditions. Children with inadequate nutrition, clothing, or hygiene (all symptoms of poverty) may also be considered victims of physical neglect.

Id.; *see also* ROBERTS, *supra* note 16, at 33 (observing that “[p]arents may be guilty of neglect because they are unable to afford adequate food, clothing, shelter, or medical care for their children”).

88. *See* Eamon & Kopels, *supra* note 34, at 823. For a discussion of these cultural differences in relation to American Indian families, *see* Sullivan & Walters, *supra* note 85.

89. ROBERTS, *supra* note 16, at 27 (quoting LINDA GORDON, *THE GREAT ARIZONA ORPHAN ABDUCTION* 309 (1999)).

90. *See* Candra Bullock, Comment, *Low-Income Parents Victimized by Child Protective Services*, 11 AM. U. J. GENDER SOC. POL’Y & L. 1023, 1041 (2003) (asserting that many parents who have their parental rights terminated are “merely guilty of

Recognizing that low socio-economic status can undermine a parent's ability to care for a child because of the attendant struggle to meet the child's first-order needs such as food, shelter, and healthcare, some state legislatures have forbidden termination of parental rights solely on the basis of poverty.⁹¹ Courts, too, have held that poverty alone is an insufficient ground for terminating parental rights.⁹² Despite these judicial and statutory limitations, many states continue to infer child neglect based on poverty alone.

We acknowledge the great difficulty in drawing a line between poverty-driven neglect on the one hand and intentional or active parental neglect on the other. The former might be thought of as passive on the part of the parents, whose circumstances are beyond their control and who do not choose to deprive their children. The latter implicates the parents' agency and culpability, and such behavior would justify child removal.

The difficulty in drawing a line between the two scenarios presumably reflects the fact that most situations lie along a continuum between them. Indeed, we found no commentator who seriously attempts to explain how child protective authorities and courts should distinguish between the two when deciding cases. In fact, few courts seriously grapple with the distinction between the two.⁹³

But the challenge of differentiating between willful or active neglect on the one hand and the consequences of insufficient resources on the other does

being poor"); Legere, *supra* note 8, at 263 ("Although, technically, parents who are unable to provide for their children (through no fault of their own) should not be included in the neglect and abuse statistics, in reality, distinctions regarding their situations are seldom made."); Cynthia Godsoe, *Parsing Parenthood* 4-5 (Brooklyn Law Sch. Legal Studies, Research Paper No. 253, 2011), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1950222 (criticizing the state for failing "to recognize the socioeconomic factors underlying most child maltreatment"). The same is true regarding urban poverty, as Dorothy Roberts has well documented. See generally ROBERTS, *supra* note 16 (discussing child removal and termination of parental rights primarily in relation to race and ethnicity).

91. See CONN. GEN. STAT. ANN. § 17A-112(k) (West, Westlaw through 2011 Jan. Reg. Sess. and June Spec. Sess.); D.C. CODE § 16-2301(9)(A)(ii) (Supp. 2011); FLA. STAT. § 39.806(1)(e)(1) (2010); N.Y. FAM. CT. § 614(1)(d) (McKinney, Westlaw through L.2011, chapters 1 to 54 and 57 to 495); N.C. GEN. STAT. § 7B-1111(a)(2) (LEXIS through 2010 Reg. Sess.); W. VA. CODE § 49-1-3(10)(A)(i) (West, Westlaw through End of the 2011 2d Extraordinary Sess.).

92. See *G.S.R. v. Gerardo R.*, 72 Cal. Repr. 3d 398, 405-06 (Cal. App. Ct. 2008) ("The record strongly suggests the *only* reason Gerardo did not obtain custody of the boys was his inability to obtain suitable housing for financial reasons. But poverty alone, even abject poverty resulting in homelessness, is not a valid basis for assertion of juvenile court jurisdiction." (footnote omitted)); *In re T.G.*, 684 A.2d 786, 791 (D.C. 1996) (holding that the government failed to meet its burden of proving that finding of neglect was not due to family's financial needs); see also RENNY GOLDEN, *DISPOSABLE CHILDREN: AMERICA'S WELFARE SYSTEM* 19 (1997).

93 *Cf.* cases cited *supra* note 92.

not justify removal of children living in poverty. Instead, this very difficulty should make authorities more cautious about removing children from impoverished families based on a finding of neglect. Further, if courts do not take seriously this distinction, parents living in poverty will be discouraged from seeking the information and assistance they need out of fear that doing so might attract the state's attention and eventually lead to the loss of their children.⁹⁴

B. Under Scrutiny

Family reluctance to seek public assistance may be justified. In fact, child welfare agencies are four times more likely to investigate families receiving public assistance and to remove their children, compared to other families.⁹⁵ The tendency of child welfare agencies to more frequently scrutinize poor families⁹⁶ is attributable in part to the fact that poor families are more often reported to child protective services.⁹⁷ Illustrative of this phenomenon is a study that found health care professionals at a clinic (indicating low-income status) were more likely than health care professionals at a doctor's office (indicating greater affluence) to report a child's missed appointment.⁹⁸

94. See U.S. DEP'T OF HEALTH & HUMAN SERVS., WHAT IS CHILD ABUSE AND NEGLECT? 3 (2008), available at <http://www.childwelfare.gov/pubs/factsheets/whatiscan.pdf> ("When a family fails to use information and resources, and the child's health or safety is at risk, then child welfare intervention may be required."); Huntington, *Mutual Dependency*, *supra* note 16, at 1505.

95. DANA MACK, THE ASSAULT ON PARENTHOOD: HOW OUR CULTURE UNDERMINES THE FAMILY 67 (1997).

96. See Thoma, *supra* note 81 ("Medicaid-eligible [families] were more likely to have their child removed than were more affluent families in cases of physical injury. While social class was not found to have an independent effect on discharge disposition in the sample as a whole, low-income families were determined to be more likely to lose their children in cases of physical injury." (citing Mitchell H. Katz et al., *Returning Children Home: Clinical Decision Making in Cases of Child Abuse and Neglect*, 56 AM. J. ORTHOPSYCHIATRY 253 (1986))).

97. See Legere, *supra* note 8, at 264 (noting that a study "provides concrete evidence that should negate any skepticism about whether the overrepresentation of the poor and minorities in foster care is due to bias").

98. *Id.* at 264-65 (describing subtlety of study's methodology for depicting families of different socioeconomic status); see also ROBERTS, *supra* note 16, at 32 ("Receiving social services and welfare benefits subjects poor parents to an extra layer of contact with mandatory reporters."). Michael Wald has suggested that mandatory health screening in schools may allow low-income children to receive the medical attention they need, without compromising family privacy. Wald, *supra* note 16, at 1031-32. For an excellent discussion of the loss of privacy associated with poverty, see Michele Estrin Gilman, *Welfare, Privacy and Feminism*, 39 U. BALT. L.F. 1 (2008).

As a related matter, the state sometimes removes children because their parents lack outward signs of a middle-class lifestyle. Judges and caseworkers, for example, often impose middle-class values and expectations on impoverished families, who may not “fit dominant cultural paradigms, such as white, married, middle-class, and suburban.”⁹⁹ In a similar vein, Professor Annette Appell argues that dominant society does not view poor families as “real” families and that it devalues these “other” families to the point of tolerating the termination of the parent-child relationship.¹⁰⁰ Parents whom the law tends to regard as less worthy include the impoverished, the divorced, racial/ethnic minorities,¹⁰¹ and/or sexual minorities.¹⁰² We provide evidence that rural families are also among these disfavored and devalued populations.

99. Annette R. Appell, *Protecting Children or Punishing Mothers: Gender, Race, and Class in the Child Protection System*, 48 S.C. L. REV. 577, 585 (1997); see also KAARYN S. GUSTAFSON, CHEATING WELFARE: PUBLIC ASSISTANCE AND THE CRIMINALIZATION OF POVERTY 18 (2011) [hereinafter GUSTAFSON] (noting that social reformers in the early 20th century wanted children “to be raised in an atmosphere of traditional middle-class values,” and whether or not a family maintained a “suitable home” and was deserving of aid programs could depend on myriad factors related to hygiene and morals); Wald, *supra* note 16, at 998, 1013-14 (noting that many commentators believe that social work agencies implement “middle-class standards to poor and minority parents [in order to] change their lifestyles to meet middle-class norms”; intervention may be based on a social worker’s distaste for an unclean home, or “may entail substituting a judge’s view of childrearing for that of the parents”).

100. Appell, *supra* note 99, at 579; see Annette Ruth Appell, *The Myth of Separation*, 6 NW. J.L. & SOC. POL’Y 291, 291 (2011) [hereinafter Appell, *Myth of Separation*] (challenging the notion that we must separate poor children from their parents and other kin in order to improve their lives); Huntington, *Mutual Dependency*, *supra* note 16, at 1507 (noting that “the idea that recipients of state aid are somehow lesser citizens is still implicit in so much of the debate surrounding social welfare programs.”). Interestingly, Appell writes of juvenile courts as having a “kin-suspicious culture,” while the child welfare system appears to favor kinship placements. See Appell, *Myth of Separation*, *supra*, at 293.

101. See, e.g., Appell *supra*, note 99, at 579 (“This ‘other-ing’ of poor families, particularly when they are of color, makes it easy for the dominant culture to devalue them: to view them as dysfunctional and not families at all.”); Dorothy E. Roberts, *Criminal Justice and Black Families: The Collateral Damage of Over-Enforcement*, 34 U.C. DAVIS L. REV. 1005, 1006 (2001) (finding that black families are disproportionately adversely affected by the increase in mass incarceration); see also Twila L. Perry, *Family Values, Race, Feminism and Public Policy*, 36 SANTA CLARA L. REV. 345, 346 (1996) (exploring how racism and sexism intersect to affect family law policy).

102. See KENJI YOSHINO, COVERING: THE HIDDEN ASSAULT ON OUR HUMAN RIGHTS 101 (2006); Suzanne Kim, *The Neutered Parent*, 24 YALE J.L. & FEMINISM (forthcoming 2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1935945; Luke A. Boso, Same-Sex Desire in a Small Town: Sexual Minorities and Rural Place in Context 62-64 (Oct. 11, 2011) (unpublished manuscript) (on file with

C. *Rurality as Poverty/Poverty as Rurality*

The connection between poverty and heightened child removal rates because of perceived neglect is evident in rural areas. Poverty rates in nonmetropolitan America, including child poverty rates, have long been higher and more enduring than in metropolitan areas.¹⁰³ Rural residents also are more likely than their urban counterparts to live in high-poverty counties, those counties with a poverty rate of 20% or greater.¹⁰⁴ The federal government designates 386 counties as “persistent poverty” counties based on the fact that the poverty rate has been 20% or greater in each of the last four decennial censuses.¹⁰⁵ Ninety percent of persistent poverty counties are nonmetropolitan.¹⁰⁶ Such counties are plagued by high poverty rates, low median household incomes, and “extreme income inequality grounded in class differences.”¹⁰⁷

Keeping a child supervised, fed, and clothed is challenging for impoverished parents, but it can be exceedingly difficult for poor, rural families facing both fiscal and spatial obstacles to accessing childcare, health care, laundry facilities, grocery stores, and other services. Malnutrition illustrates the close relationship between poverty and neglect. A low-income parent likely will struggle to feed her children, a situation aggravated if the parent lives in one of the many rural “food deserts,” places where few or no grocery stores exist¹⁰⁸ or where “cheap, nutritious food is virtually unobtainable.”¹⁰⁹ Given

author) (discussing cases in which status as a sexual minority is held against a rural parent in context of termination of parental rights or child custody determination).

103. See U.S. DEP’T OF AGRIC. ECON. RESEARCH SERV., RURAL POVERTY AT A GLANCE, RURAL DEVELOPMENT RESEARCH REPORT NO. 100 (2004), available at http://www.ers.usda.gov/publications/rdr100/rdr100_lowres.pdf [hereinafter RURAL POVERTY AT A GLANCE]. For definitions of metropolitan and nonmetropolitan, see *infra* note 106.

104. Daniel T. Lichter & Kenneth M. Johnson, *The Changing Spatial Concentration of America’s Rural Poor Population*, 72 RURAL SOC. 331, 338 (2007).

105. *Id.*

106. *Id.* The U.S. government labels “nonmetropolitan” counties with fewer than 100,000 residents and no urban cluster larger than 50,000. See *Metropolitan and Micropolitan Statistical Areas*, U.S. CENSUS BUREAU, <http://www.census.gov/population/www/metroareas/metroarea.html> (last visited Nov. 1, 2011).

107. KATHLEEN PICKERING, MARK H. HARVEY, GENE F. SUMMERS & DAVID MUSHINSKI, WELFARE REFORM IN PERSISTENT RURAL POVERTY: DREAMS, DISENCHANTMENTS, AND DIVERSITY 30 (2006); see CYNTHIA M. DUNCAN, WORLDS APART: WHY POVERTY PERSISTS IN RURAL AMERICA 155, 193-94 (1999) (noting “extreme income inequality of have and have-nots” in persistent poverty counties and describing efforts of middle class to associate with the wealthy and to avoid and disapprove of poor in order to “deliberately maintain a two-class system”).

108. See Kai A. Schafft et al., *Food Deserts and Overweight Schoolchildren: Evidence from Pennsylvania*, 74 RURAL SOC. 153, 153, 157-58 (2009) (finding that school districts in areas with no nearby supermarket were “structurally and economi-

rural America's association with agriculture, it is a cruel irony that the incidence of food insecurity in nonmetropolitan counties is so high.¹¹⁰

D. *Rurality and Reunification*

The rural socio-spatial landscape can create significant barriers for parents seeking to regain their children following initial removal. To effect reunification, state agencies create plans that set forth series of demands with which a parent must comply.¹¹¹ Depending on the individual case, a plan might require completion of an abuse counseling program, parenting education, a psychological evaluation and compliance with associated recommendations, maintenance of adequate housing or transportation, and/or demonstration of financial ability to provide for the child.¹¹² Reunification plans are blueprints for failure for many parents.

cally disadvantaged" and had higher rates of childhood obesity); see Lois Wright Morton, H. Dreamal I. Worthen & Lorraine J. Weatherspoon, *Rural Food Insecurity and Health*, in CRITICAL ISSUES IN RURAL HEALTH 101, 103 (2004); *California's Central Valley Disconnect: Rich Land, Poor Nutrition*, NAT'L PUB. RADIO (July 10, 2009), <http://www.npr.org/templates/story/story.php?storyId=106061080>.

109. Cliff Guy, Graham Clarke & Heather Eyre, *Food Retail Change and the Growth of Food Deserts: A Case Study of Cardiff*, 32 INT'L J. RETAIL & DISTRIBUTION MGMT. 72, 73 (2004).

110. The U.S. government defines "food insecurity" as at times being "uncertain of having, or unable to acquire, enough food for all household members because they had insufficient money and other resources for food." U.S. DEP'T OF AGRIC., HOUSEHOLD FOOD SECURITY IN THE UNITED STATES, 2006 at 4 (2007), available at <http://www.foodbanksbc.org/documents/usdepofag.pdf>. Very low food security occurs when "food intake of one or more members was reduced and eating patterns disrupted because of insufficient money and other resources for food." *Id.*

111. See U.S. DEP'T OF HEALTH & HUMAN SERVS., CHILD WELFARE INFO. GATEWAY, CASE PLANNING FOR FAMILIES INVOLVED WITH CHILD WELFARE AGENCIES 2 (2011), available at http://www.childwelfare.gov/systemwide/laws_policies/statutes/caseplanning.pdf ("States require a case plan when a child welfare agency places a child in out-of-home care, including foster care, placement with a relative, group homes, and residential placement.").

112. See, e.g., State v. Lisa G. (*In re Interest of Alyssia G.*), No. A-02-374, 2003 Neb. App. LEXIS 61, at *2-3 (Neb. Ct. App. Mar. 11, 2003). The case plan required Mother to:

- (1) obtain and maintain a legal source of income;
- (2) obtain and maintain suitable housing for herself and her children;
- (3) complete a psychiatric evaluation;
- (4) abstain from possessing or ingesting alcohol and/or controlled substances unless prescribed by a licensed, practicing physician;
- (5) submit to random drug screens within 24 hours of DHHS' request;
- (6) complete an outpatient chemical dependency treatment program;
- (7) participate in a domestic violence education and support group;
- (8) complete the 'Boys Town Common Sense Parenting Program';
- (9) have reasonable rights of supervised visitation; and
- (10) immediately inform her attorney,

In some instances, courts and child welfare agencies design plans to which adherence is virtually impossible, particularly in rural areas.¹¹³ For example, the “[s]imple failure to maintain a purely subjective housekeeping standard, the missing of an appointment, failure to ‘adequately assimilate’ budgeting skills, or the disconnection of a telephone can result in the permanent separation of a child from his or her parents.”¹¹⁴ Courts, too, sometimes recognize that plans are “frequently beyond the capacity of the parents to deal with.”¹¹⁵

Reunification plans typically require parents to make substantial investments of time and money. A report of the San Diego Grand Jury in 1991-92 emphasized the time commitments reunification plans require:

Defense attorneys have testified that they have told clients that it is impossible for them to work and comply with reunification. Judges and referees were observed, seemingly without thought, ordering parents into programs which require more than 40 hours per week. Frequently, these parents have only public transportation. Obviously, there is no time to earn a living or otherwise live a life. A parent often becomes a slave to the reunification plan.¹¹⁶

Yet the time required to comply with reunification plans is likely to be greater still for rural parents, who also must deal with spatial barriers and transportation deficits. A dearth of mental health services in rural places¹¹⁷ means rural

DHHS, and the juvenile court administrator in writing of any change in her address or telephone number.

Id.

113. See GRAND JURY OF SAN DIEGO, *FAMILIES IN CRISIS: A CRISIS OF PUBLIC CONFIDENCE IN THE JUVENILE DEPENDENCY SYSTEM* 18 (1992), available at <http://www.scribd.com/doc/33300038/1991-92-San-Diego-County-Grand-Jury-Report-2-Families-in-Crisis>.

114. Rick Thoma, *A Critical Look at the Child Welfare System, Reunification Plans: Recipes for Failure*, LIFTING THE VEIL, <http://www.liftingtheveil.org/reunification.htm> (last updated Sept. 16, 1997); see also text accompanying note 56.

115. *Recodo v. Dep't of Human Res., Div. of Child & Family Servs.*, 930 P.2d 1128, 1136 (Nev. 1997) (Springer, J., dissenting), *overruled by Sam Z. v. Hikmet J. (In re Termination of Parental Rights as to N.J.)*, 8 P.3d 126 (Nev. 2000).

116. GRAND JURY OF SAN DIEGO, *supra* note 113, at 18.

117. See Brenda J. Eastman, Shelia G. Bunch, A. Hamilton Williams & Lena W. Carawan, *Exploring the Perceptions of Domestic Violence Service Providers in Rural Localities*, 13 VIOLENCE AGAINST WOMEN 700, 701-02 (2007); see also Barry L. Locke & Jim Winship, *Social Work in Rural America: Lessons from the Past and Trends for the Future*, in RURAL SOCIAL WORK PRACTICE 3, 5 (Nancy Lohmann & Roger A. Lohmann eds., 2005) (discussing rural challenge of achieving economies of scale in relation to service delivery); Lisa R. Pruitt, *The Forgotten Fifth: Rural Youth and Substance Abuse*, 20 STAN. L. & POL'Y REV. 359, 389 (2009); Vieth, *supra* note 13, at 143 (observing that rural and urban Americans face similar issues of drug, al-

parents often must travel long distances to attend the required counseling and parenting programs. Rural parents may struggle to comply with plans requiring them to participate regularly in, for example, rehabilitation services, counseling, or drug abuse programs. These parents may spend as much or more time commuting to the facilities as they do in actual treatment. Further, households plagued with poverty are more likely not to own a car,¹¹⁸ and a larger proportion of rural counties than urban counties are characterized by a high rate of “carlessness.”¹¹⁹ Moreover, public transportation is rare and inefficient in rural places.¹²⁰ Lack of childcare and irregular work schedules create additional barriers.¹²¹

Ironically, entanglement with child protection agencies often undermines rural and poor parents’ ability to comply with reunification plans.¹²² Many parents, for example, rely upon their children’s Social Security disability payments or welfare funds.¹²³ When the state removes these parents’ children, the parents lose not only such income sources, they may also lose

cohol, poverty, mental illness, and other social dilemmas, but that rural communities tend to lack the services necessary to address these issues).

118. LAWRENCE C. HAMILTON, LESLIE R. HAMILTON, CYNTHIA M. DUNCAN & CHRIS R. COLOCOUSIS, *CARSEY INST., PLACE MATTERS: CHALLENGES AND OPPORTUNITIES IN FOUR RURAL AMERICAS* 29 (2008) [hereinafter HAMILTON ET AL.] (reporting that more than 90% of individuals on public assistance do not own a car and that residents of poor regions of Appalachia and the South are particularly hard hit.)

119. See U.S. DEP’T OF AGRIC., *RURAL TRANSPORTATION AT A GLANCE* 3 (2005), available at http://www.ers.usda.gov/publications/AIB795/AIB795_lowres.pdf [hereinafter USDA, *RURAL TRANSPORTATION*] (reporting that “92.7 percent of rural households had access to a car in 2000, compared with 88.9 percent of urban households” but that rural counties have at least double the urban county rate of “carlessness,” defined as more than 10% of families having no car).

120. See Pruitt, *Missing the Mark*, *supra* note 11, at 455-56; see also USDA, *RURAL TRANSPORTATION*, *supra* note 119, at 3 (finding that “less than 10 percent of Federal funding for public transportation goes to rural areas,” that “[p]ublic transportation is available in 60 percent of rural counties” with 28% offering only limited services, and only one in four providers serving multiple counties).

121. McLaughlin & Coleman-Jensen, *supra* note 10, at 632; see Tickamyer & Smith, *supra* note 11, at 336-37. Additionally, many rural workers lack access to paid sick time. KRISTIN SMITH & ANDREW SCHAEFER, *CARSEY INST., RURAL WORKERS HAVE LESS ACCESS TO PAID SICK DAYS* 1 (2011), available at <http://www.carsey.institute.unh.edu/publications/IB-Smith-Paid-Sick-Leave.pdf> (reporting that 44% of rural workers “lack access to paid sick time”); Pruitt, *Rural Families and Work-Family Issues*, *supra* note 13.

122. See Eamon & Kopels, *supra* note 34, at 823; Corey S. Shdaimah, “*CPS Is Not a Housing Agency*”; *Housing Is a CPS Problem: Towards a Definition and Typology of Housing Problems in Child Welfare Cases*, 31 *CHILD. & YOUTH SERVICES REV.* 211, 216 (2009).

123. Shdaimah, *supra* note 122, at 216.

their homes if they cannot make monthly housing payments.¹²⁴ Without adequate housing, a parent likely falls out of compliance with the reunification plan and in turn fails to demonstrate parental fitness.¹²⁵

Child removal also may diminish parents' emotional functioning and self-confidence.¹²⁶ Removal of the child "removes much of the parents['] incentive to struggle against the conditions under which they live."¹²⁷ Poverty exacerbates these situations because it frequently leads to a "variety of aversive psychological and social conditions such as financial stress, depression, family conflict, low levels of social support, and residence in disadvantaged neighborhoods."¹²⁸

The lack of anonymity that characterizes rural places also may aggravate the situation if it results in a diminution of the community's social support for the family.¹²⁹ That is, once a family becomes entangled with child protective services, other members of the community may withhold their support because they come to view the family as unworthy of it.¹³⁰ Thus rural socio-spatial dynamics may come into play, increasing problems rather than ameliorating them.

124. *Id.*

125. *See id.*

In the best case, removal is envisioned as a temporary measure; loss of housing further threatens family stability and creates hurdles that did not exist prior to CPS involvement. Loss of housing or failure to secure adequate housing can also make compliance with family service plans more difficult. Lack of adequate housing may exacerbate trauma to children and parents due to separation and may also interfere with other aspects of the family service plan, such as visitation.

Id.

126. William Byler, *The Destruction of American Indian Families*, WASH. ST. DEPT'T SOC. & HEALTH SERVS., http://www.dshs.wa.gov/CA/pubs/mnl_icw/appendixA_4.asp (last updated Jan. 10, 2008).

127. *Id.*

128. Eamon & Kopels, *supra* note 34, at 823; *see* WENDY A. WALSH, CARSEY INST., *HARD TIMES MADE HARDER: STRUGGLING CAREGIVERS AND CHILD NEGLECT I* (2010), available at <http://www.carseyinstitute.unh.edu/publications/IB-Walsh-Neglect-Final.pdf> (noting that "intervention and prevention must not only integrate substance abuse and mental health services but also address the needs and effects of long-term poverty, such as apathy, loss of hope, and indifference").

129. *See* MARGARET K. NELSON, *THE SOCIAL ECONOMY OF SINGLE MOTHERHOOD: RAISING CHILDREN IN RURAL AMERICA* 23 (2005); SHERMAN, *supra* note 14, at 7, 113 (collecting sources).

130. SHERMAN, *supra* note 14, at 8, 11-13 (discussing the tendency of working class rural residents to judge one another harshly on moral bases, often associated with work); *see* DUNCAN, *supra* note 107, at 155, 193-94; Lisa R. Pruitt, *The Geography of the Class Culture Wars*, 34 *SEATTLE U. L. REV.* 767, 794-95 (2011) [hereinafter Pruitt, *Class Culture Wars*] (discussing judgments that the settled working class make of the "hard living").

IV. SNAPSHOTS OF TERMINATION IN RURAL PLACES

Many realities of rural living and the accompanying socioeconomic, structural, and spatial hurdles described in Part III weigh against parents in termination proceedings. A parent's residence in a rural place can play a significant role in termination proceedings. Even when courts are cognizant of these realities, they may nevertheless make harsh judgments of parents.

The Iowa Court of Appeals, for example, found a mother unable to "act in the best interests of her children," because she was "living in a trailer park in a rural area, isolated from services, shopping or neighborhood resources."¹³¹ Further, the court noted, the mother "had no transportation and there was nothing within walking distance."¹³² The court suggested that the mother was at fault because she lived in a rural place without services.¹³³ Missing from the court's narrative was any acknowledgement that she presumably had limited housing alternatives, if any at all. In this case and other cases detailed below, courts use rurality against parents, citing inadequacies associated with their rural circumstances as reasons for terminating parental rights.

Just as cases like the Iowa decision reveal judgments of rurality, they also reveal judgments about class and, in particular, poverty. Cases discussed in the following Parts illustrate how poverty and rurality get collapsed in the judgments that child welfare agencies and courts make about the fitness of poor rural families. They also illustrate some courts' insensitivity to rural realities that often are beyond parents' control.

A. Housing

Rural residents, particularly renters, are more likely than their urban counterparts to live in substandard housing,¹³⁴ and rural homelessness is a

131. *In re A.H.*, No. 01-0195, 2001 WL 1659290, at *2 (Iowa Ct. App. Dec. 28, 2001).

132. *Id.*

133. *See id.* at *2-3. The court does not seem aware that poverty is associated with immobility. *See* DANIEL T. LICHTER & DOMENICO PARISI, CARSEY INST., CONCENTRATED RURAL POVERTY AND THE GEOGRAPHY OF EXCLUSION 2-4 (2008), available at <http://www.aecf.org/~media/PublicationFiles/Carsey%20Institute.pdf>. A U.S. Census Bureau report in the midst of the 2008-09 recession illustrates the correlation between fiscal uncertainty and mobility. *See* Sam Roberts, *Slump Creates Lack of Mobility for Americans*, N.Y. TIMES, Apr. 23 2009, at A1, available at <http://www.nytimes.com/2009/04/23/us/23census.html>. It showed that the "number of people who changed residences declined to 35.2 million from March 2007 to March 2008, the lowest number since 1962, when the nation had 120 million fewer people." *Id.*

134. *See* HOUS. ASSISTANCE COUNCIL, HOUSING IN RURAL AMERICA 1-2 (2010), available at <http://www.ruralhome.org/storage/documents/housingamerica1010.pdf> [hereinafter HOUSING IN RURAL AMERICA].

growing problem.¹³⁵ In 2009, 1.5 million rural homes (5.4%) were substandard.¹³⁶ Among rural households in poverty, the incidence of substandard housing is more than twice the national rate,¹³⁷ and the volume of suitable rental housing is declining.¹³⁸ Rural minority communities, among the “worst housed groups in the entire nation,”¹³⁹ face particularly high levels of substandard living.¹⁴⁰ Characteristics of substandard housing may include structural or design defects; lack of utilities or facilities such as running water or proper heating systems; and substantial deterioration.¹⁴¹ Courts vary in their attitude toward such circumstances.¹⁴²

Several courts have held that substandard housing is not a legally sufficient basis for removing a child from a parent’s care.¹⁴³ The Arkansas Supreme Court, for example, found in 1979 that a statute allowing termination where the parents are unable to provide a “proper home” for the child was unconstitutionally vague under both the U.S. and Arkansas Constitutions.¹⁴⁴ The court held that the term “proper home” was subject to “such a wide latitude for interpretation that its meaning would vary widely among judges, who, like other human beings, can only see things through their own eyes.”¹⁴⁵ The court opined that the term “proper home” failed to provide guidelines sufficient to inform a parent of his or her obligations to the child.¹⁴⁶ The

135. See, e.g., AOUE, *The Rural Face of Homelessness*, LEGAL RURALISM BLOG, (Sept. 30, 2009, 7:08 AM), <http://legalruralism.blogspot.com/2009/09/face-of-rural-homelessness.html> (collecting sources).

136. HOUSING IN RURAL AMERICA, *supra* note 134, at 1-2.

137. See *id.*

138. HOUS. ASSISTANCE COUNCIL, CONNECTING THE DOTS: A LOCATION ANALYSIS OF USDA’S SECTION 515 RENTAL HOUSING AND OTHER FEDERALLY SUBSIDIZED RENTAL PROPERTIES IN RURAL AMERICA 8 (2008), available at http://www.ruralhome.org/storage/documents/connectingthedots_introbackdrop.pdf (noting that USDA’s Section 515 Rural Rental Housing program funded the development of 11,542 units of affordable rental housing in 1994, but only 486 units in 2006, a reduction of 90%).

139. HOUSING IN RURAL AMERICA, *supra* note 134, at 2.

140. *Id.* (noting, for example, that one in five rural African American families lives in substandard housing).

141. DEP’T OF HOUS. & URBAN DEV., NOTICE OF FUNDING AVAILABILITY; FAMILY REUNIFICATION PROGRAM 7-8 (2009), available at <http://archives.hud.gov/funding/2009/fupsec.pdf>.

142. See *supra* notes 131-32 and *infra* notes 143-58 and accompanying text.

143. See, e.g., L.A. Cnty. Dep’t of Children & Family Servs. v. Gerardo R. (*In re G.S.R.*), 72 Cal. Rptr. 3d 398, 405-06 (Cal. Ct. App. 2008); cf. 110 MASS. CODE REGS. 1.11 (Westlaw current through October 14, 2011, Register #1193) (“Ensuring that families remain together whenever possible is a primary goal in serving the homeless.”).

144. *Davis v. Smith*, 583 S.W.2d 37, 40 (Ark. 1979).

145. *Id.* at 43.

146. *Id.* at 42.

same might be said of many of the standards applied in removal and termination proceedings.

In a similar vein to the Arkansas decision, the California Court of Appeal held in an unpublished 2008 opinion that a father's inability to afford housing was an insufficient basis for terminating his rights:

DCFS may not bootstrap the fact that Gerardo was too poor to afford housing, which would not have served as a legitimate ground for removing the boys in the first place, to support findings of detriment, all of which flow directly from the circumstances of Gerardo's poverty and his concomitant willingness to leave his sons in his family's care while he stayed close, maintained familial ties and worked to raise rent money.¹⁴⁷

These decisions illustrate some courts' diligence in distinguishing between the consequences of parents' socioeconomic situations and their parental fitness.

But not all courts have been so willing to put poverty and its trappings in proper perspective in the context of a parental fitness inquiry. Other decisions cite unsuitable housing as a reason for removal of a child or for termination of the parent's rights.¹⁴⁸ Judges may scrutinize a family's dwelling place and take inventory of unacceptable features, including a lack of running water, electricity, or heat.¹⁴⁹ Unwashed dishes stacked in the sink,¹⁵⁰ trash in the kitchen,¹⁵¹ dirty clothes strewn about,¹⁵² holes in the floor covered with road

147. *Gerardo R.*, 72 Cal. Rptr. 3d at 406. The Court continued:

This is particularly so when DCFS might have assisted Gerardo to obtain affordable housing, but made no effort to do so. . . .

. . . .

It is not up to Gerardo to prove he is a fit parent. Rather, it is up to DCFS to satisfy its constitutional burden to establish, by clear and convincing evidence, that he is not.

Id. at 406-08.

148. See Deborah S. Harburger with Ruth A. White, *Reunifying Families, Cutting Costs: Housing-Child Welfare Partnerships for Permanent Supportive Housing*, 83 CHILD WELFARE 493, 494-95 (2004).

149. See, e.g., *In re J.C.W.*, No. M2007-02433-COA-R3-PT, 2008 Tenn. App. LEXIS 575, at *14 (Tenn. Ct. App. Sept. 26, 2008) (noting lack of running water and electricity); *In re S.R.*, No. 2-07-454-CV, 2008 Tex. App. LEXIS 4146, at *2 (Tex. Ct. App. June 5, 2008) (observing, among other things, that "an extension cord ran from the trailer house to another trailer house to provide electricity and that there was only enough electricity for the television" and that "the water pressure was nonexistent, and the hot water heater was not functioning").

150. *In re S.R.*, 2008 Tex. App. LEXIS 4146, at *2.

151. *Id.*

152. *RS v. Johnson Cnty. Dep't of Family Servs.* (*In re JL*), 989 P.2d 1268, 1271 (Wyo. 1999).

signs,¹⁵³ and clutter¹⁵⁴ are among the characteristics cited by an array of courts that have found housing inadequate. A Tennessee court, for example, terminated the parental rights of a father in nonmetropolitan Smithville,¹⁵⁵ citing the “deplorable” condition of the family’s trailer.¹⁵⁶ Although the court noted that the father had begun some improvement work on the residence, the trailer lacked refrigeration and running water¹⁵⁷ and “cables hooked to a car battery” provided electricity.¹⁵⁸ The court did not discuss the availability or affordability of other housing options.

Even where housing is not the primary reason for removal of a child, resolving housing problems improves the prospects for successful reunification.¹⁵⁹ Unfortunately, the cost of purchasing, renting, or rehabilitating a home is prohibitive for many rural parents.¹⁶⁰ Housing is often the final and most difficult hurdle parents must overcome to achieve reunification.¹⁶¹

B. Transportation

Although rural residents are more likely than their urban counterparts to own a vehicle,¹⁶² rural transportation expenses exceed those in urban lo-

153. *In re S.R.*, 2008 Tex. App. LEXIS 4146, at *2.

154. *In re J.C.W.*, 2008 Tenn. App. LEXIS 575, at *13.

155. *Id.* at *3; see *American FactFinder*, U.S. CENSUS BUREAU, <http://factfinder.census.gov/> (search “Smithville, Tennessee”) (last visited Nov. 2, 2011) (reporting the 2000 population as 3,994).

156. *In re J.C.W.*, 2008 Tenn. App. LEXIS 575, at *3.

157. *Id.* at *13-14.

158. *Id.*

159. Jeanne C. Marsh, Joseph P. Ryan, Sam Choi & Mark F. Testa, *Integrated Services for Families with Multiple Problems: Obstacles to Family Reunification*, 28 CHILD. & YOUTH SERVICES REV. 1074, 1077 (2006); Shdaimah, *supra* note 122, at 212 (citing S. Choi & J. P. Ryan, *Co-Occurring Problems for Substance Abusing Mothers in Child Welfare: Matching Services to Improve Family Reunification*, 29 CHILD. & YOUTH SERVICES REV. 1395, 1404-05 (2007)).

160. HOUS. ASSISTANCE COUNCIL, HOUSING IN RURAL AMERICA: GROWTH AND CHANGE 28 (2002), available at <http://216.92.48.246/pubs/hsganalysis/ts2000/TS2C National.pdf> (“Approximately 5.5 million, or one-quarter of the 23 million nonmetro households, pay more than 30 percent of their monthly income for housing costs and are therefore considered cost-burdened. More than 2.4 million of these nonmetro cost-burdened households pay more than half their incomes toward housing costs. Most cost-burdened households have low incomes, and a disproportionate number are renters.”). Despite the high percent of income paid for housing, rural homes make up approximately “30 percent of units [in the nation] without adequate plumbing.” *Id.* at 30.

161. Shdaimah, *supra* note 122, at 216 (observing that “the attempts of parents and professionals working together can be thwarted by housing even when all else is successful”).

162. See USDA, RURAL TRANSPORTATION, *supra* note 119, at 3.

cales.¹⁶³ High fuel prices and the spatial distances associated with rural living aggravate transportation challenges.¹⁶⁴ Additional problems present themselves to the 1.6 million rural households without a vehicle.¹⁶⁵ Only 60% of rural counties offer public transportation which, even where available, tends to be expensive and inefficient.¹⁶⁶ While some courts acknowledge the burden these structural deficits place on rural parents, other courts make them the basis of uncharitable scrutiny.

Access to transportation directly affects a parent's ability to comply with a reunification plan.¹⁶⁷ In some instances, these plans require parents to obtain a driver's license and a means of transportation.¹⁶⁸ More demanding plans require a parent to maintain a driver's license, an adequate vehicle, and insurance.¹⁶⁹ More lenient plans deem sufficient the establishment of a "transportation support system."¹⁷⁰ For example, the Arkansas Court of Appeals in 2008 reversed an order terminating the parental rights of a mother in nonmetropolitan Drew County, Arkansas,¹⁷¹ in part because the mother was able to secure stable, "readily available transportation" from family members.¹⁷²

Even if one is able to secure transportation, long distances coupled with numerous required trips may prove an insurmountable hurdle to compliance with the reunification plan.¹⁷³ A court in Erie County, Pennsylvania, terminated one mother's parental rights because she was unable to comply with a

163. See *id.*; PIYUSHIMITA THAKURIAH (VONU) & YIHUA LIAO, UNIV. OF ILL. URBAN TRANSP. CENTER, AN ANALYSIS OF VARIATIONS IN VEHICLE-OWNERSHIP EXPENDITURES 13 (2005), available at www.utc.uic.edu/~fta/Reports/thakuriah-final-cdrom.pdf ("In general, urban households allocate about 15 percent of their total expenditure on transportation whereas rural households allocate about 22 percent. . . . [T]he average number of vehicles owned by all rural households is about 2.90, whereas the average is about 2.4 for urban households.").

164. See NELSON, *supra* note 129, at 35.

165. USDA, RURAL TRANSPORTATION, *supra* note 119, at 3.

166. *Id.* at 3-4.

167. See *supra* notes 162-66 and accompanying text.

168. *E.g.*, *S.B.L. v. Cleburne Cnty. Dep't of Human Res.*, 881 So.2d 1029, 1033 (2003).

169. *E.g.*, *In re J.D.R.*, No. COA05-1203, 2006 N.C. App. LEXIS 887, at *7 (N.C. Ct. App. Apr. 18, 2006).

170. *E.g.*, *Strickland v. Ark. Dep't of Human Servs.*, 287 S.W.3d 633, 639 (Ark. Ct. App. 2008).

171. *Id.* at 634, 639; see *American FactFinder*, *supra* note 155 (search "Drew County, Arkansas") (noting 2000 population at 18,723).

172. *Strickland*, 287 S.W.3d at 636.

173. See Lisa R. Pruitt, *Toward a Feminist Theory of the Rural*, 2007 UTAH L. REV. 421, 433-34 (2007) [hereinafter Pruitt, *Feminist Theory*] (observing that "transportation challenges put . . . rural residents at a disadvantage for getting access to employment, health care, child care, and other services").

parenting program the social service agency recommended.¹⁷⁴ The program required the mother to get to counseling centers located twenty to thirty miles from her rural home.¹⁷⁵ A dissenting judge was more sympathetic,¹⁷⁶ noting that the mother did not own a car, public transportation was not available,¹⁷⁷ and the agency did not provide transportation or home-based instruction options.¹⁷⁸

One solution is for parents to depend on other people for transportation, but doing so may reflect poorly on the parent. A Delaware court cited such lack of self-sufficiency as one reason for terminating the rights of a rural mother who resided with her own mother, the child's grandmother, "in rural New Castle County [Delaware] along Route 13 away from regular lines of public transportation."¹⁷⁹ The mother's inability to drive, along with the grandmother's reluctance to lend her vehicle to the child's mother, weighed against the mother's fitness in the court's assessment.¹⁸⁰ Further, the court criticized the mother's decision not to relocate to a shelter, presumably in an urban locale, where services would be more readily available.¹⁸¹

Distance from services, employment, and housing has factored prominently in other judicial decisions to terminate a parent's rights. In 1997, the Supreme Court of Nevada confirmed the termination of Adrina Recodo's parental rights.¹⁸² Recodo was a resident of a "very rural" reservation located in Southern Nevada, fifty miles from Las Vegas.¹⁸³ The court terminated Recodo's rights based on her inability to find housing and employment and to establish the requisite stability to "function as a proper and acceptable parent."¹⁸⁴ The court reported the transportation difficulties Recodo faced:

174. *In re Adoption of J. S. H.*, 445 A.2d 162, 163, 167 (Pa. Super. Ct. 1982).

175. *Id.* at 172 (Johnson, J., dissenting).

176. *Id.* at 169-74.

177. *Id.* at 172.

178. *Id.*

179. *Div. of Family Servs. v. L.X. (In re K.X.X.)*, 801 A.2d 12, 21 (Del. Fam. Ct. 2002), *aff'd sub nom. Anthony v. Div. of Family Servs.*, 813 A.2d 1140 (Del. 2002).

180. *Id.* at 25. The court observed:

Mother's ability to be employed is further hampered by her dependence upon others for transportation. Mother, while possessing a driver's license, does not drive. Residing with maternal Grandmother in rural New Castle County along Route 13 away from regular lines of public transportation makes Mother dependent upon others to get to work.

Id. at 21.

181. *Id.*

182. *Recodo v. Dep't of Human Res., Div. of Child & Family Servs. (In re Parental Rights as to Bow)*, 930 P.2d 1128, 1129 (Nev. 1997), *overruled by Sam Z. v. Hikmet J. (In re Termination of Parental Rights as to N.J.)*, 8 P.3d 126 (Nev. 2000), *discussed in Pruitt, Feminist Theory, supra* note 173, at 456-57.

183. *Recodo*, 930 P.2d at 1138 (Springer, J., dissenting).

184. *Id.* at 1133 (majority opinion) (quoting *Champagne v. Welfare Div.*, 691 P.2d 849, 855 n.5 (Nev. 1984)) (internal quotation marks omitted).

Recodo testified that during this period, she drove her grandfather's car into Las Vegas but that after a while she was unable to afford gas for the daily trips between Las Vegas and her grandmother's house on the reservation. As a result, she would stay with friends in Las Vegas, or when that was not possible she would study and sleep in the car. Recodo also testified that at this point her financial situation was so bad that often she would not eat for days just so she could afford to drive to Las Vegas to attend school and to try to find a job.¹⁸⁵

The majority saw this situation as evidence of Recodo's lack of parental fitness, but Justice Charles E. Springer dissented, expressing his concern for the mother's situation.¹⁸⁶ Calling the state's response to Recodo's situation "premature and unseemly,"¹⁸⁷ Justice Springer noted that the record was "replete with descriptions of the almost insurmountable obstacles put in the way of Ms. Recodo by the State."¹⁸⁸

Lack of transportation also may be an obstacle to attending hearings. In one Wisconsin case, a court terminated a mother's parental rights after permitting the county's Department of Health and Human Services to present its entire case, despite the fact that the mother, Roberta, was absent from the hearing.¹⁸⁹ A blizzard caused Walworth County, Wisconsin, to cancel public transportation services, but the mother relied on those services to get to the hearing.¹⁹⁰ Before leaving the courtroom, the mother's lawyer argued that proceeding in the mother's absence was inappropriate, explaining that she did not drive and had been unable to procure transportation because of the "whiteout" that day.¹⁹¹ The trial judge expressed a startling lack of sensitivity as he refused to stall the proceedings:

185. *Id.* at 1130.

186. *See id.* at 1136 (Springer, J., dissenting).

187. *Id.* at 1138.

188. *Id.* A social worker described the obstacles that Adrina Recodo faced: "The reservation is in a very rural area and commuting to Las Vegas is fifty plus miles. And, we had at that time no suitable day care at the reservation. He was an infant. We had Head Start, but there was no way for her to leave him." *Id.*

189. *Walworth County H.H.S. v. Roberta W. (In re Exsavon A.J.)*, Nos. 2008AP1236, 2008AP1237, 2008 Wisc. App. LEXIS 879, at *29 (Wis. Ct. App. Nov. 12, 2008).

190. *Id.* at *27-28.

191. *Id.* Defense counsel presented facts regarding Roberta's inability to get to the courthouse:

Yesterday approximately 1:30, she got a call from Leslie Mollet . . . the social worker in this case, and Leslie Mollet told Roberta that there is a possibility [that despite] the arrangements [that] have been previously made to pick her up – there is a possibility that they many [sic] not be able to because of the weather, and [Mollet] suggested that [Roberta] should

I am not responsible for her transportation. I recognize there is no public transportation anywhere in the County, but I am not responsible for her transportation. We live in a rural county . . . and there is adverse weather – if people don't like the weather in Walworth County, Wisconsin let them move to Florida, but meanwhile, we have a calendar to call. And I can't let the transportation people determine whether or not I can call a case.¹⁹²

On appeal, Roberta claimed that the court denied her statutory right to counsel at her dispositional hearing.¹⁹³ The appellate court agreed, finding that the mother and her counsel had a right to participate.¹⁹⁴

try to see if her brother or someone else could pick her up and bring her to Court.

At approximately 2:30, Roberta called the on-call person over at transportation and they said we're not sure whether the weather is going to cancel all the rides, we'll know by 4:00 AM. [Roberta informed them that] there is no way I can get alternative transportation from my brother who lives in Milwaukee to come to Racine and take me there knowing by 4:00 AM. And then [Roberta] called back about 3:30 and then they told her all Walworth County transportation has been cancelled including your ride and do the best you can.

[Roberta] has been trying to get a ride. When she talked to me just a few minutes ago she was on a pay phone and had tried to get a ride and was unable to get a ride, and so that presents a particular problem at least for me because, Judge, I can't proceed without my client.

And, secondly, I think it's a problem for the Court because in order to give her at least a minimum due process that she has the right to be here. She will need to advise me on the cross-examination and what's happened in previous – we've gone through a jury trial, Judge, as you know, and she would advise me of areas, she would write notes. I cannot proceed without her and cross-exam in this case the County's witnesses.

Secondly, Judge, her testimony is necessary in this disposition hearing. I think it's very pertinent for you to hear from Roberta because it is Roberta's parental rights that are being terminated and I frankly don't see how we can proceed without her presence. And her absence here is through no fault of her own. She does not drive. Walworth County transportation had been scheduled to pick her up. Because of the weather – and I can testify, Judge, I live in Delavan, I came twelve miles here to court and the roads were snow packed. In fact, when I was going it was almost a whiteout and I had a tough time seeing The weather is inclement, and I can understand why Walworth County transportation cancelled all of their transportation services. Well, that is beyond her control, Judge.

Id. at *26-28 (alterations in original).

192. *Id.* at *28.

193. *Id.* at *2.

194. *Id.* at *29-30; *see also* A.M. v. Dep't of Children & Families, 853 So. 2d 1084, 1085 (Fla. Dist. Ct. App. 2003) (per curiam) (“[C]ourts should ordinarily refrain from determining a termination of parental rights by default where an absent

In contrast to these decisions, other judges have recognized the “hardships attendant to living in a rural area without private transportation,”¹⁹⁵ commending parents who put forth considerable effort to attend parenting classes or visitations. In one such case, the Georgia Department of Family and Children Services recommended terminating the rights of a father, a rural resident, because he did not have a driver’s license or a vehicle.¹⁹⁶ The trial court agreed and terminated the father’s rights, despite the concession by the appointed caseworker of the Georgia Department of Family and Children Services that “the father had been cooperative and had done everything she asked of him, even describing him as ‘the most stable person that [she had] worked with.’”¹⁹⁷ The Georgia Court of Appeals reversed.¹⁹⁸ In addition to noting that driving was not part of the original case plan,¹⁹⁹ the court observed that “many parents, even those in rural areas, are able to adequately care for their children without [driving].”²⁰⁰

Decisions like that of the Georgia appellate court offer hope, even as the decisions of the caseworker and the trial court illustrate the consequences for disadvantaged families when the state fails to take transportation into account, creating generic reunification plans that are impractical in rural places.²⁰¹ Such plans reflect a metrocentric status quo that unfairly burdens rural families. As such, these plans are more likely to result in failed reunification.

parent is making reasonable effort to be present at the scheduled hearing and is delayed by forces or circumstances beyond the parent’s control.”). *Cf.* *S.C. v. Dep’t of Children & Families*, 877 So. 2d 831, 834 (Fla. Dist. Ct. App. 2004) (terminating parental rights of mother who failed to appear by telephone at appointed time and offered no reasonable excuse for her failure to participate).

195. *In re P.A.B.*, 570 A.2d 522, 523 (Pa. Super. Ct. 1990).

196. *In re S.M.W.*, 651 S.E.2d 211, 213 (Ga. Ct. App. 2007).

197. *Id.* (alteration in original).

The evidence shows that the father substantially complied with his case plan: he received a substance abuse assessment; regularly participated in (although had not yet completed) a drug and alcohol treatment program; submitted to random drug screens, which showed he was drug and alcohol free; and had sufficient housing. He had inquired about family counseling, but had not received a referral from DFCS. DFCS employees who worked with the father found him to be cooperative.

Id.

198. *Id.* at 214.

199. *Id.*

200. *Id.*

201. See Email from Jill M. Fraley, Assistant Professor of Law, Washington & Lee Univ. Sch. of Law, to Lisa R. Pruitt, Professor of Law, Univ. of Cal., Davis, Sch. of Law (July 8, 2011) (on file with author) (discussing Professor Fraley’s experiences representing abused and neglected children for the Commonwealth of Kentucky).

C. Psychological Well-Being

Some courts express concern about the negative psychological consequences rural living can have on children. Yet many studies indicate that children who are “in contact with the natural environment” experience less life stress, have a better psychological and physical well-being, and exhibit higher cognitive functioning.²⁰² Studies further indicate that natural outdoor environments draw children together.²⁰³ Rural children with free access to outdoor play generally have more playmates and more enhanced social skills than their urban peers, who are less likely to experience unsupervised outdoor play.²⁰⁴

Despite these findings, courts choosing between rural and urban settings in child custody disputes often choose urban places. Courts note, for example, that urban settings provide children with more opportunities for socializing with peers,²⁰⁵ participating in school events,²⁰⁶ and receiving quality edu-

202. Nancy M. Wells & Gary W. Evans, *Nearby Nature: A Buffer of Life Stress Among Rural Children*, 35 ENV'T & BEHAVIOR 311, 312 (2003), available at <http://www.outdoorfoundation.org/pdf/NearbyNature.pdf> (“Time spent in contact with the natural environment has been associated with better psychological well-being, superior cognitive functioning, fewer physical ailments, and speedier recovery from illness.” (internal citations omitted)); see also GLEN H. ELDER, JR. & RAND D. CONGER, CHILDREN OF THE LAND: ADVERSITY AND SUCCESS IN RURAL AMERICA 191-202 (2000); FRANK MOBLEY HOWELL, YUK-YING TUNG & CYNTHIA WADE-HARPER, THE SOCIAL COST OF GROWING-UP IN RURAL AMERICA: RURAL DEVELOPMENT AND SOCIAL CHANGE DURING THE TWENTIETH CENTURY (1996); Elvira Cicognani, Cinzia Albanesi & Bruna Zani, *The Impact of Residential Context on Adolescents’ Subjective Well Being*, 18 J. COMMUNITY & APPLIED SOC. PSYCHOL. 558, 558 (2008) (discussing impact of place on adolescents’ sense of self); Salamon, *supra* note 2, at 10. But see Hugh Matthews, Mark Taylor, Kenneth Sherwood, Faith Tucker & Melanie Limb, *Growing-Up in the Countryside: Children and the Rural Idyll*, 16 J. RURAL STUD. 141, 151 (2000) (finding that rural youth felt alienated and that their needs and aspirations were rarely met at the local level, in part because of a lack of services such as public transportation, and that youth also felt “observed and censored, seldom able to find autonomous social space away from the adult gaze”).

203. Wells & Evans, *supra* note 202, at 313.

204. See *id.* at 314-15.

205. See *Spoor v. Spoor*, 641 N.E.2d 1282, 1284 (Ind. Ct. App. 1994) (noting that preferred home was “located near parks and other homes offering opportunities for the children to make friends”).

206. *State ex rel. Paul v. Peniston*, 105 So.2d 228, 231 (La. 1958). The Louisiana Supreme Court had to choose between placing the minor, Shirley Rae, with her natural parents, the Pauls, or with the child’s aunt and uncle, the Penistons. *Id.* at 229. The court initially placed Shirley Rae with the Penistons when her natural mother contracted tuberculosis. *Id.* at 230. The Louisiana Supreme Court concluded that either party was able to properly care for Shirley Rae, but it opted to leave the child with the Penistons, rather than returning her to the rural home of her natural parents. *Id.* at 230, 232. The court observed that the Penistons were “truly devoted to Shirley

caution.²⁰⁷ Social psychologists testifying in such cases have argued that moving a child to a rural environment may result in psychological detriment by failing to “offer much challenge or opportunity” to the child.²⁰⁸

Rae and have given her every possible spiritual and material advantage,” noting in particular that the Penistons provided the child with a variety of educational and extracurricular activities that would be unavailable in a rural place. *See id.* at 231. Justice Tate, concurring on other grounds, nevertheless found unpersuasive the testimony “that Shirley Rae’s baton-twirling activities would be disrupted by her return to the rural and more humble home of her parents (in which, perhaps, the less glamorous duties of learning kitchen chores awaited her).” *Id.* at 232 (Tate, J., concurring).

207. *See id.* at 231 (referring to the variety of educational opportunities in the more urban setting). Interestingly, these rural educational deficits are also assumed in elite college admissions, where graduates of rural schools have the caliber of their schools held against them. *See* MITCHELL L. STEVENS, CREATING A CLASS: COLLEGE ADMISSIONS AND THE EDUCATION OF ELITES 213 (2004) (discussing the plight of the “rural New England valedictorian” who is rarely admitted to elite colleges because her credentials are seen as inferior to those of students who attended larger, more competitive high schools).

208. *Berg v. Berg*, 490 N.W.2d 487, 495 (N.D. 1992). The testimony of a psychologist figured prominently in the *Berg* court’s decision to award custody to the mother, rather than to the rural-dwelling father. *Id.* The psychologist stated in his report to the court that, while both parents were “clearly capable of effective parenting behavior,” the mother “could likely better prepare [the children] for the future, by exposing them to new people and experiences.” *Id.* at 490 (internal quotation marks omitted). The psychologist noted that the father, based on his rural living arrangement, “probably could give [the children] more continuity with, and access to, the past,” but this was outweighed by the mother’s metro locale, which would “better prepare[] [the children] for independent life, as adults.” *Id.* at 490-91 (first alteration in original) (internal quotation marks omitted). Judge Wright, dissenting in the decision, took issue with the psychologist’s “disdain for rural North Dakota”:

Given the fact that North Dakota is a rural state that stresses its quality of life, this is particularly disturbing. I’m sure we would not have to look very far to find children that have come out of towns as small as Max or smaller who have been successful as adults. Also, heaven forbid, what if these children wanted to be farmers like their father?

Id. at 495 (Wright, J., dissenting). In a 1948 child custody case, a Pennsylvania court suggested that moving the minor child from an urban setting to a rural one would “leave the girl a bitter, frustrated child which would destroy all hope of her developing a normal personality.” *Commonwealth ex rel. v. Bishop*, 63 Pa. D. & C. 182, 184 (Com. Pl. 1948). This language is especially striking given the early date of the case, when our nation was far more rural than it is now. *But see Jones v. Jones*, 885 P.2d 563, 570 (Nev. 1994) (suggesting that a rural environment contributes to a child’s quality of life); *Fossum v. Fossum*, 545 N.W.2d 828, 831-32 (S.D. 1996) (opining that the move from a “close-knit rural community” to a more urban area had been detrimental to children); *Ottinger v. Ottinger*, No. 03A01-9801-CV-00027, 1998 WL 497997, at *1 (Tenn. Ct. App. Aug. 20, 1998) (determining that the father’s rural neighborhood would better serve the interest of the child, compared to mother’s “downtown” neighborhood); *In re Marriage of Grigsby*, 57 P.3d 1166, 1172 (Wash.

Not surprisingly, trial courts in rural counties are less likely to classify rural places as psychologically harmful; the same can be said of appellate judges in states with significant rural populations.²⁰⁹ Indeed, these judges may focus instead on the benefits of rural living. A court in nonmetropolitan Wheatland County, Montana,²¹⁰ opined that residence in rural Harlowton provided a psychologically beneficial environment for a “quiet child” who suffered from anxiety, low self-esteem, and social phobia.²¹¹ In amending a parenting plan, the court accepted the child’s preference to remain in the county seat of Harlowton, population 1062.²¹² The court noted that the child’s preference stemmed from “the stability she has gained in that community, the sense of security she has achieved, the friends that she enjoys, and the overall acceptance that one feels in a small, rural community.”²¹³ The court thus acknowledged benefits associated with a rural upbringing.

These decisions illustrate the influence of rural stereotypes on thinking about what is best for children. But rural living – like urban living – is not a homogeneous, standardized experience.²¹⁴ Courts may nevertheless offer sweeping characterizations of rural life and its impact on various aspects of well-being to justify removal of children from rural homes. Unlike transportation and housing deficits, which material assistance may remedy, parents may be unable to counter a decision maker’s biases about rural living as socially limiting or psychologically harmful.

V. PLACE-SPECIFIC POLICY RECOMMENDATIONS

Policymakers often disregard or are unaware of differences between rural and urban living. Rural residents account for about one-fifth of America’s population,²¹⁵ but they are frequently invisible or forgotten by law- and poli-

Ct. App. 2002) (touting the benefits of the rural setting on Whidbey Island where the children “thrived”).

209. See, e.g., *Berg*, 490 N.W.2d at 495 (Wright, J., dissenting).

210. The 2000 total population of Wheatland County, Montana was 2259. *American FactFinder*, *supra* note 155 (search “Wheatland County, Montana”; select “2000 Census”). For a detailed demographic and economic profile of Wheatland County, see Pruitt, *Spatial Inequality*, *supra* note 16, at 66-69.

211. *In re Marriage of Baumgardner*, No. DR-92-17, 2001 Mont. Dist. LEXIS 3674, at *6 (Mont. Dist. Ct. Sept. 17, 2001) (internal quotation marks omitted).

212. *Id.*; see also *American FactFinder*, *supra* note 155 (search “Harlowton, Montana”; select “2000 Census”).

213. *Baumgardner*, 2001 Mont. Dist. LEXIS 3674, at *6. The judge’s reasoning reflects popular views that rural places are good places to raise children. See *supra* notes 1-2 and accompanying text.

214. See Tickamyer & Smith, *supra* note 11, at 338.

215. According to the 2000 Census, 79% of the U.S. population lived in urban areas and 21% lived in rural areas. *GCT-PI Urban/Rural and Metropolitan/Nonmetropolitan Population: 2000*, U.S. CENSUS BUREAU, <http://factfinder.cen->

cy-makers.²¹⁶ As such, the laws and regulations that govern them may reflect urban agendas and be designed for urban contexts. They may thus prove unworkable or inappropriate for families living in rural communities who face different spatial, educational, and economic limitations.²¹⁷ Failure to grapple in a meaningful way with the needs of rural people “permits both neglect and romanticization of rural life and livelihoods.”²¹⁸ In the following sections, we offer specific recommendations for the state’s engagements with disadvantaged rural families.

sus.gov/home/saff/main.html?_lang=en (follow “Decennial Census – get data” hyperlink; then follow the “Geographic Comparison Tables” hyperlink; then select the “United States – Urban/Rural and Inside/Outside Metropolitan Area” hyperlink; then select the “GCT-P1 Urban/Rural and Metropolitan/Nonmetropolitan Population: 2000” hyperlink) (last visited Nov. 3, 2011). Between 2000 and 2010, the share of the U.S. population living in nonmetropolitan counties dropped from 18% to 16.5%. U.S. DEP’T OF AGRIC. ECON. RESEARCH SERV., RURAL AMERICA AT A GLANCE 5 (2011), available at <http://www.ers.usda.gov/Publications/EIB85/>. See generally *Introduction to THE HIDDEN AMERICA: SOCIAL PROBLEMS IN RURAL AMERICA FOR THE TWENTY-FIRST CENTURY 14-18* (Robert M. Moore III ed., 2001); *FORGOTTEN PLACES: UNEVEN DEVELOPMENT IN RURAL AMERICA* (Thomas A. Lyson & William W. Falk eds., 1993).

216. Katherine Porter, *Going Broke the Hard Way: The Economics of Rural Failure*, 2005 WIS. L. REV. 969, 1028 (2005); see Tickamyer & Smith, *supra* note 11, at 336-37.

217. Governments in Australia and New Zealand employ the concept of “rural proofing” laws and policies to ensure that they do not disserve rural people and places by implicitly assuming urban context. See PARLIAMENT OF VICTORIA, RURAL & REG’L COMM., INQUIRY INTO THE EXTENT AND NATURE OF DISADVANTAGE AND INEQUITY IN RURAL AND REGIONAL VICTORIA xviii (2010), available at http://www.parliament.vic.gov.au/images/stories/committees/rrc/disadvantage_and_inequality/report/20101014_for_web.pdf (recommending “that the State Government establish an independent rural proofing advisory body with an ongoing role to monitor and review legislation, government policy, practices and resources allocation as it has an impact on rural and regional Victorians and in order to ensure that government legislation and policy reflects and responds to the diverse needs of rural and regional Victorians”); see also PARLIAMENT OF VICTORIA, RURAL & REG’L COMM., INQUIRY INTO REGIONAL CENTRES OF THE FUTURE 83 (2009), available at http://www.parliament.vic.gov.au/images/stories/committees/rrc/tourism/RCF/_20091124.1130_ircfreport.pdf (describing New Zealand’s practice of rural proofing as “a process for taking into account the circumstances and needs of the rural community (rural people and rural businesses) when developing and implementing policy” and noting that “[a]ccording to this New Zealand model, in addition to the effects of low population density and isolation, regional and rural diversity and dynamism need to be taken into account when considering the implications of proposed policies”).

218. See Ann R. Tickamyer, *Rural Poverty*, in HANDBOOK OF RURAL STUDIES 411, 411 (Paul Cloke, Terry Marsden & Patrick Mooney eds., 2006).

A. Rural Service-Delivery Models

Rural families in distress, particularly those families seeking to meet the requirements for reunification with their children, need access to various services, some or all of which are not available to them.²¹⁹ “One-size-fits-all”²²⁰ or “shrink-to-fit”²²¹ service delivery methods may fail to provide useful resources to needy rural parents. Many implicitly urban service-delivery models will not work in rural communities, even with those delivery models scaled down to serve smaller populations. These failures have cultural and structural components, as rural residents often are unable to engage with urban-designed programs and services that ignore rural realities.²²²

For example, frequent caseworker contact correlates with family reunification,²²³ but urban service-delivery models do not consistently lead to increased interaction in rural locales because of spatial obstacles and associated costs.²²⁴ Rural social service staff often must visit families in their homes,²²⁵ many of which are scattered across sparsely populated areas.²²⁶ Staffing shortages and high turnover rates among rural caseworkers further undermine

219. See generally SCOTT W. ALLARD, *OUT OF REACH: PLACE, POVERTY, AND THE NEW AMERICAN WELFARE STATE* 47-87 (2009) (examining spatial inequalities in delivery of services to the poor); Pruitt, *Spatial Inequality*, *supra* note 16 (discussing spatial challenges to delivery of health and human services in Montana’s rural counties).

220. See Sharon B. Templeman & Lynda Mitchell, *Challenging the One-Size-Fits-All Myth: Findings and Solutions from a Statewide Focus Group of Rural Social Workers*, 81 *CHILD WELFARE* 757, 758 (2002).

221. Maxine Jacobson, *Local Realities: A Frontier Perspective on Child Protection Team Practice*, 81 *CHILD WELFARE* 737, 738 (2002) (internal quotation marks omitted).

222. Templeman & Mitchell, *supra* note 220, at 760; Tickamyer & Smith, *supra* note 11, at 341 (criticizing the apparent assumption of policy makers that solutions for the structural and economic challenges facing rural families will “trickle down from programs designed for urban populations”).

223. U.S. DEP’T OF HEALTH & HUMAN SERVS., *FAMILY REUNIFICATION: WHAT THE EVIDENCE SHOWS* 6 (2006), available at http://www.ce-credit.com/articles/101406/family_reunification.pdf.

224. See Charles L. Baker, *The Practice of Child Welfare in the Rural Setting*, in *CHILD WELFARE: A MULTICULTURAL FOCUS* 227, 237 (Neil A. Cohen ed., 2d ed. 2000); see also *RURAL SOCIAL WORK PRACTICE*, *supra* note 117, at 6; Brandt, *supra* note 13, at 358.

225. THE NAT’L ADVISORY COMM., ON RURAL HEALTH & HUMAN SERVS., 111TH CONG., *THE 2009 REPORT TO THE SECRETARY: RURAL HEALTH AND HUMAN SERVICES ISSUES* 32 (2009), available at <http://www.hrsa.gov/advisorycommittees/rural/2009/secreport.pdf> [hereinafter NAT’L ADVISORY COMM.].

226. Pruitt, *Rural Justice*, *supra* note 5, at 355.

service delivery efficacy when workers are unable to develop relationships of trust that are required to serve a family in distress.²²⁷

In addition to overcoming spatial barriers, effective service delivery requires caseworkers to understand myriad cultural values, norms, and privacy-related concerns. For example, the high density of acquaintanceship and associated lack of anonymity that characterize small communities pose barriers to rural caseworker contact.²²⁸ In places where “everybody knows everybody,”²²⁹ a family that asks for assistance risks exposing its economic situation, which may result in humiliation, shame, or fear.²³⁰ These and other privacy-related concerns may impede a social worker’s ability to maintain contact with a family seeking to avoid embarrassment and community scorn.

Rural cultural values and norms also contribute to rural parents’ reluctance to seek outside assistance.²³¹ Rural sociologists have documented rural

227. Brett Drake et al., *Implementing the Family Preservation Program: Feedback from Focus Groups with Consumers and Providers of Service*, 12 CHILD & ADOLESCENT SOC. WORK J. 391, 402 (1995) (“The issue of trust between consumers and workers was a recurrent issue, with rural providers stating that consumers often did not trust their agencies, and that the state does not trust local community groups, particularly with fiscal responsibility.”); Elizabeth Randall & Dennis Vance, Jr., *Directions in Rural Mental Health Practice*, in RURAL SOCIAL WORK PRACTICE, *supra* note 117, at 187, 198 (noting that “the ability to live and thrive socially and emotionally in a rural area is an important predictor of success, and rural treatment center or programs that recruit staff without taking this relationship into account are often plagued with high rates of staff turnover”); Paul A. Sundet & Charles D. Cowger, *The Rural Community Environment as a Stress Factor for Rural Child Welfare Workers*, 14 ADMIN. SOC. WORK 97, 98-99, 108-09 (1990) (Job “[s]tress is most directly associated with immediate working conditions” which is shaped by workload factors such as the availability of supervision, caseload size, caseload complexity, case improvement, case decision autonomy, and geographic dispersion of cases.).

228. Marc Mormont, *Who Is Rural? Or, How to Be Rural: Towards a Sociology of the Rural*, in RURAL RESTRUCTURING: GLOBAL PROCESSES AND THEIR RESPONSES 21, 26 (Terry Marsden et al. eds., 1990) (noting familiarity among rural neighbors); see Fern K. Willits et al., *Persistence of Rural/Urban Differences*, in RURAL SOCIETY IN THE U.S.: ISSUES FOR THE 1980S, at 69, 70 (Don A. Dillman & Daryl J. Hobbs eds., 1982).

229. Katherine MacTavish & Sonya Salamon, *Mobile Home Park on the Prairie: A New Rural Community Form*, 66 RURAL SOC. 487, 487 (2001); see Pruitt, *Missing the Mark*, *supra* note 11, at 472 (collecting sources); Lisa R. Pruitt, *Place Matters: Domestic Violence and Rural Difference*, 23 WIS. J.L. GENDER & SOC’Y 347, 363-65 (2008) (collecting sources).

230. See SHERMAN, *supra* note 14, at 193. It may also result in loss of community support. See sources cited *supra* notes 129-30.

231. See HAMILTON ET AL., *supra* note 118, at 12; Nancy A. Naples, *Contradictions in Agrarian Ideology: Restructuring Gender, Race-Ethnicity, and Class*, 59 RURAL SOC. 110, 120-22 (1994) (observing stigma associated with receipt of public assistance in two rural Iowa communities); Mark R. Rank & Thomas A. Hirschl, *A Rural-Urban Comparison of Welfare Exits: The Importance of Population Density*,

residents' tendency to value hard work and self-sufficiency,²³² resist governmental intrusion,²³³ and adhere to patriarchal norms.²³⁴ Such values also may inhibit rural people from availing themselves of public assistance.²³⁵ Rural parents may therefore aggravate grim situations by failing to seek help when they need it.²³⁶

Home-based models of service delivery, on the other hand, are practical alternatives for rural parents. Urban models tend to offer facility-based services, but rural residents may have difficulty gaining access to them,²³⁷ or they may reject them outright. Home-based or in-home service models offer services outside the confines of a particular facility or place.²³⁸ These models are more practical, private options for rural parents, and studies indicate that home-based service delivery increases the likelihood of reunification.²³⁹ Moreover, utilizing community structures and informal systems of care also improves rural residents' access to services.²⁴⁰

53 RURAL SOC. 190, 197-98 (1998) (finding that rural residents are likely to receive welfare for shorter periods of time; authors attributed this in part to greater stigma associated with reliance on public assistance among rural folk); Struthers & Bokemeier, *supra* note 7, at 25-27 (describing rural residents' strategies for economic self-sufficiency and the obloquy associated with public assistance, even by those who had previously received it); Willits et al., *supra* note 228, at 72 (characterizing welfare as "foreign to rural persons, conflicting sharply with their . . . independence and self-sufficiency").

232. See JOE BAGEANT, *DEER HUNTING WITH JESUS: DISPATCHES FROM AMERICA'S CLASS WAR* (2007); Pruitt, *Class Culture Wars*, *supra* note 130, at 795 (collecting sources, including SHERMAN, *supra* note 14).

233. See JoDee Keller & Katherine McDade, *Attitudes of Low-Income Parents Toward Seeking Help with Parenting: Implications for Practice*, 89 CHILD WELFARE 285, 289 (2000); see also BAGEANT, *supra* note 232, at 28-29 (asserting that local businesses tend to support "low taxes, few or no local regulations, no unions"); Willits, *supra* note 228, at 72 (associating rural residence with resistance to federal government).

234. Pruitt, *Rural Justice*, *supra* note 5, at 357-58 (collecting sources, discussing reasons for the phenomenon and considering extent to which it remains accurate).

235. See *supra* notes 229-34.

236. See generally Keller & McDade, *supra* note 233, at 289.

237. Michael B. Blank et al., *Critical Issues in Reforming Rural Mental Health Service Delivery*, 31 COMMUNITY MENTAL HEALTH J. 511, 516 (1995).

238. *Id.*

239. See Mark W. Fraser, Elaine Walton, Robert E. Lewis, Peter J. Pecora & Wendel K. Walton, *An Experiment in Family Reunification: Correlates of Outcomes at One-Year Follow-Up*, 18 CHILD. & YOUTH SERVICES REV. 335, 338-39 (1996) [hereinafter Fraser et al.].

240. See *id.*

B. Kinship Placement

Kinship ties are strong in rural places,²⁴¹ and grandparents and other family members who provide childcare, transportation, and housing are frequently an invaluable safety net for economically unstable rural parents.²⁴² Friends and neighbors serve as additional sources of informal support.²⁴³ Despite the greater economic opportunities associated with metropolitan places, many rural residents are unwilling or unable to leave behind these kinship networks.²⁴⁴ Yet courts may not understand the significance of these ties. For example, a court suggesting that an urban shelter is preferable to temporary rural housing with family and friends²⁴⁵ fails to recognize rural community members' cultural preference for kinship care, as well as the feelings of security that poor rural families gain from such networks.²⁴⁶

241. See NELSON, *supra* note 129, at 65; SHERMAN, *supra* note 14, at 109. Rural attachment to place is also often associated with “the attractions and the amenities of rural living.” Tickamyer & Smith, *supra* note 11, at 339.

242. See NELSON, *supra* note 129, at 184; SHERMAN, *supra* note 14, at 115; Nina Glasgow, *Older Rural Families*, in CHALLENGES FOR RURAL FAMILIES IN THE TWENTY-FIRST CENTURY, *supra* note 2, at 86, 94 (noting the increasingly significant role that rural grandparents play in caring for grandchildren); Pruitt, *Rural Justice*, *supra* note 5, at 352 (collecting sources); see also KRISTIN SMITH, CARSEY INST., RURAL FAMILIES CHOOSE HOME-BASED CHILD CARE FOR THEIR PRESCHOOL-AGED CHILDREN 2 (2006), available at http://www.carseyinstitute.unh.edu/publications/PB_childcare_06.pdf (noting that “use of informal non-related care providers is higher in rural communities than in urban areas”). This is characteristic of working class families in both rural and urban locales. JOAN C. WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE: WHY MEN AND CLASS MATTER 46 (2010) (reporting that “working-class families typically patch together a crazy quilt of family-delivered care that may include, in addition to parents’ shift work, drafting grandparents and other family members to help with child care”).

243. See SHERMAN, *supra* note 14, at 115. Again, this is characteristic of working class families, as compared to more affluent and better educated families. WILLIAMS, *supra* note 242, at 169 (“[W]orking-class families live relatively close to their relatives and spend a large part of their social time with kin.” (quoting Marjorie DeVault)); *id.* (discussing adults who “speak daily with their brothers and sisters and their parents” and “[c]ousins [who] play together several times a week” (quoting Annette Lareau)); *id.* at 207 (expressing preference for neighbors to watch their children, which feels like “natural extension of the reciprocal relationships”).

244. See Ann. R. Tickamyer, *Public Policy and Private Lives: Social and Spatial Dimensions of Women’s Poverty and Welfare Policy in the United States*, 84 KY. L.J. 721, 738-39 (1996); Tickamyer & Henderson, *supra* note 2, at 112-14.

245. Div. of Family Servs. v. L.X. (*In re K.X.X.*), 801 A.2d 12, 21 (Del. Fam. Ct. 2002), *aff’d sub nom.* Anthony v. Div. of Family Servs., 813 A.2d 1140 (Del. 2002).

246. NELSON, *supra* note 129, at 65; Christina E. Miewald & Eugene J. McCann, *Gender Struggle, Scale and the Production of Place in the Appalachian Coalfields*, 36 ENV. & PLANNING A 1045, 1058 (2004). But see J. Brian Brown & Daniel T. Lichter, *Poverty, Welfare, and the Livelihood Strategies of Nonmetropolitan Single Mothers*,

Kinship placement, whether for temporary removal or placement as foster parents, may be especially beneficial in rural contexts.²⁴⁷ For example, parent-child visitation enhances the prospects for family reunification.²⁴⁸ Because foster homes are in short supply in rural areas,²⁴⁹ when the state removes rural children from their homes and places them in non-kin foster care, the children likely are located farther from their biological families.²⁵⁰ Kinship placement often reduces the distance between the parent and child, thus improving visitation. Kinship placement also may enable children to remain in the same community, school, and social activities, all of which diminish the stress and anxiety associated with removal.

Congress did not pass ASFA to respond to the kinship ties that rural families often value,²⁵¹ but the federal law has increased the attention that child welfare agencies give to identifying and recruiting relatives early in a child's foster care placement history.²⁵² If a child is "under the responsibility

69 RURAL SOC. 282, 293-94 (2004) (providing statistics that "make it clear that it is dangerous to assume nonmetro single mothers can rely on stronger extended family support and kinship ties").

247. See Sandra Beeman & Laura Boisen, *Child Welfare Professionals' Attitudes Toward Kinship Foster Care*, 78 CHILD WELFARE 315, 322-23 & tbl.2 (1999) (noting that 76.8% of workers agreed that "children were better off being placed with kin rather than nonkin"; 69.7% agreed that children placed in kinship foster care demonstrated a "stronger sense of belonging in the foster family" compared to children in nonkinship foster homes; 92.1% of workers thought kinship foster care could be "beneficial to the kin foster child in his/her identity formation"; and 74.5% thought "that family ties are better preserved in kinship foster care"); WALSH & MATTINGLY, *supra* note 63, at 2 ("Kinship care is often a preferred arrangement as it is care by a relative and often less traumatic for children."); cf. John Landsverk, Inger Davis, William Ganger, Rae Newton & Ivory Johnson, *Impact of Child Psychosocial Functioning on Reunification from Out-of-Home Placement*, 18 CHILD. & YOUTH SERVICES REV. 447, 459 (1996).

248. Inger P. Davis, John Landsverk, Rae Newton & William Ganger, *Parental Visiting and Foster Care Reunification*, 18 CHILD. & YOUTH SERVICES REV. 363, 363 (1996).

249. NAT'L ADVISORY COMM., *supra* note 225, at 30; MARYBETH J. MATTINGLY, MELISSA WELLS & MICHAEL DINEEN, CARSEY INST., *OUT-OF-HOME CARE BY STATE AND PLACE: HIGHER PLACEMENT RATES FOR CHILDREN IN SOME REMOTE RURAL PLACES 1* (2011), available at http://www.carseyinstitute.unh.edu/publications/FS_Mattingly_Out-of_Home.pdf (noting that "remote rural areas have higher rates of out-of-home placement" and "nearly half of the states have the highest placement rates in remote rural areas").

250. NAT'L ADVISORY COMM., *supra* note 225, at 30.

251. See Rob Green, *Kinship Foster Care: An Ongoing Yet Largely Uninformed Debate*, in KINSHIP CARE: MAKING THE MOST OF A VALUABLE RESOURCE 1, 10 (Rob Green ed., 2003).

252. See *id.*

of the State for 15 of the most recent 22 months,”²⁵³ the state must start removal proceedings unless, “at the option of the State, the child is being cared for by a relative.”²⁵⁴ Having a child in the care of a relative thus may extend the timeline with which the state is working. Further, Congress recognized the potential benefits of kin care when it included a provision in ASFA requiring the Department of Health and Human Services to “convene [an] advisory panel . . . and prepare and submit to the advisory panel an initial report on the extent to which children in foster care are placed in the care of a relative.”²⁵⁵

The 1996 Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”) further shaped the policy surrounding kin care. PRWORA stipulates that in order to receive funding for welfare programs, states 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.”²⁵⁶ As a result, all states require that child welfare agencies give preference to “fit and willing”²⁵⁷ relative caregivers. All states except Georgia and Illinois give preference to relatives when placing a child whom the state has removed from his or her parents.²⁵⁸ In addition, many states have a broad definition of kin, which includes those persons with emotional ties to the child, such as godpar-

253. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, § 103, 111 Stat. 2115, 2118 (codified as amended at 42 U.S.C. § 675 (2006)) (mandating that a state join or initiate termination of parental rights proceedings for all children who have been in foster care for “15 of the most recent 22 months”); *see also* 143 CONG. REC. S12526-02, S12526 (daily ed. Nov. 13, 1997) (statement of Sen. Chafee) (“States will be required to make a permanent plan for these children after a year, and if a child has been in foster care for more than 15 months . . . the State will be required to take the first steps toward terminating parental rights and finding an adoptive home.”).

254. Adoption and Safe Families Act § 103.

255. *Id.*

256. 42 U.S.C. § 671(a)(19).

257. This language is not used in all state statutes. Colorado, for example, requires a relative to be “appropriate, capable, willing, and available.” COLO. REV. STAT. § 19-1-115 (1)(a) (LEXIS through all laws passed at 1st Reg. Sess. of the 68th Gen. Assemb. of the State of Colo.). Other states specify that a relative must be “qualified to receive and care for the child,” GA. CODE ANN. § 15-11-58(h)(i)(1)(A) (LEXIS through 2011 Extraordinary Sess.), or “suitable and willing,” IND. CODE ANN. § 31-34-4-2 (West, Westlaw through 2011 1st Reg. Sess.).

258. JACOB LEOS-URBEL, ROSEANA BESS & ROB GEEN, STATE POLICIES FOR ASSESSING AND SUPPORTING KINSHIP FOSTER PARENTS 11 (2000) (noting that most states have followed this practice since the early 1990s); *see* AMY JANTZ, ROB GREEN, ROSEANA BESS, CYNTHIA ANDREWS & VICTORIA RUSSELL, URBAN INST., THE CONTINUING EVOLUTION OF STATE KINSHIP CARE POLICIES 8-9 (2002).

ents, neighbors, and family friends.²⁵⁹ Such placement with relatives should be made only when consistent with the best interests of the child, and courts who fail to discern between poverty and neglect may find relatives unfit if they share the parents' socioeconomic struggles.

C. Educating Judges

In seeking fairness in child removal proceedings, rural families often find an additional barrier in the courts, which may display ignorance of and insensitivity to the realities of rural parenting and of rural lifestyles. First, judges may receive little, if any, formal judicial training related to their roles and responsibilities in child abuse and neglect cases.²⁶⁰ Compared to their urban and suburban counterparts, rural judges spend even less time on such cases.²⁶¹ Inexperience and lack of specialization may lead a judge to mistake poverty or related circumstances of disadvantaged rural living for neglect,

259. LEOS-URBEL ET AL, *supra* note 258, at 13 (noting that twenty-three states and the District of Columbia define kin to include only those related by blood, marriage, or adoption; twenty-one states include in the definition of kin persons beyond blood, marriage or adoption; and six states have no formal definition of kin).

260. *E.g.*, John Haney & Lisa Kay, *Making Reasonable Efforts in Iowa Foster Care Cases: An Empirical Analysis*, 81 IOWA L. REV. 1629, 1676 (1996). A survey of judges in Iowa found the following: "Fifty-four percent of judges reported having no training in handling CHINA (Child in Need of Assistance) cases, three percent reported having less than one day of training, nine percent had one to three days of training, and twenty-six percent received more than four days of training." *Id.* at 1630, 1676 (footnotes omitted).

Rural doctors and police may similarly lack the skills necessary to properly assess child abuse cases. Vieth, *supra* note 13, at 153. Moreover, rural doctors may feel financial pressure to not report signs of child abuse for fear that their patients may find a new practitioner. *Id.* at 154, 157, 160-61 (suggesting that rural practitioners train professionals in their respective areas of work to handle child abuse and discussing the need for rural communities to coordinate services and efforts in order to maximize the already scarce resources). *See also* Brandt, *supra* note 13, at 358 (discussing the lack of specialized judges in rural areas and predominantly rural states).

261. *See* Haney & Kay, *supra* note 260, at 1677.

Judges in both medium and large counties indicated they spend over six hours per week preparing for CHINA hearings, which result in over eleven hours of hearings per week. This data was statistically significant when compared to averages for preparation in medium and large counties. Indeed, state-wide averages indicate that judges spend at least an hour preparing for every two hours of court time, whereas judges hearing cases in rural areas spend less than forty-five minutes preparing for every two hours of court time. The responses indicate that judges hearing cases in rural areas spend fourteen percent less time preparing for cases than their contemporaries in medium and large counties.

Id. (footnotes omitted).

and to terminate parental rights on that basis. Such termination is contrary to stated law, but it occurs in practice.²⁶²

Second, judges may apply unrealistic parenting standards to impoverished families.²⁶³ Some psychologists point out that, while developmental models of parenting “delineate narrow qualities of an optimal parenting environment,”²⁶⁴ many poor parents are unable to meet these optimal standards.²⁶⁵ These parents are not only economically disadvantaged, they “typically are poorly educated . . . and suffer from a multitude of problems, including psychiatric problems and difficulties with substance abuse.”²⁶⁶ Therefore, while some cases of child abuse or neglect present relatively easy determinations for judges, more ambiguous situations require a sophisticated understanding of family functioning and parental competence.²⁶⁷ Doing justice for rural families also may require an understanding of cultural differences and of the particular spatial and social challenges these families face. While effective advocates for these disadvantaged parents may be able to educate judges about rural realities, lawyers are scarce in rural places and may not be readily available for those who need them.²⁶⁸

262. See *supra* notes 81-90 and accompanying text and Part IV generally.

263. *Blanca P. v. Superior Court*, 53 Cal. Rptr. 687, 696 (Cal. Ct. App. 1996) (discussing the juvenile court’s termination of parental rights on basis of psychologist’s opinion that parent had failed to “‘internalize’ general parenting skills”).

264. Sandra T. Azar, Allison F. Lauretti & Bruce V. Loding, *The Evaluation of Parental Fitness in Termination of Parental Rights Cases: A Functional-Contextual Perspective*, 1 CLINICAL CHILD & FAMILY PSYCHOL. REV. 77, 78 (1998).

265. See *id.* at 79.

266. *Id.*

267. See *id.* at 95. The authors advocate a dyadic/family assessment:

The ultimate decision is a moral one, but psychologists can provide judges who make this decision with valuable behaviorally based information regarding the parent’s capacities to function in the role of parent and to provide a given child with the environment they need to develop. The data collection we have described can provide the judge with an organized picture of the parent and help them to place that picture in the context of what is currently known about the way families function. Such data allow for more informed decisions and ones less based on emotional reactions.

Id.

268. See AM. BAR ASS’N, RURAL PRO BONO DELIVERY: A GUIDE TO PRO BONO LEGAL SERVICES IN RURAL AREAS 12 (2003), available at http://apps.americanbar.org/legalservices/probono/aba_rural_book.pdf (reporting on the critical shortage of attorneys practicing in rural places and the various practice barriers facing rural counsel); CAL. COMM’N ON ACCESS TO JUSTICE, IMPROVING CIVIL JUSTICE IN RURAL CALIFORNIA 8-11 (2010), available at <http://calbar.ca.gov/LinkClick.aspx?fileticket=wBD9dBj4%3D&tabid=216>. This problem may be mitigated in states guaranteeing right to counsel in termination proceedings. See Laura K. Abel & Max Rettig, *State Statutes Providing for a Right to Counsel in Civil Cases*, 40 CLEARINGHOUSE REV. 245, 246 & n.6, 252 tbl.B2 (2006) (listing states that guarantee counsel for parents in state-initiated termination-of-parental rights proceedings).

D. Redirecting Funds

In order to limit the unnecessary termination of the rights of impoverished rural parents, state and federal governments should dedicate more funding to family preservation efforts. The federal government spends significantly more on out-of-home care than on in-home treatment and prevention.²⁶⁹ In fact, for every dollar the federal government spends in subsidies for the out-of-home placement of children, it spends just \$0.14 on prevention and protective services.²⁷⁰ The federal government matches unlimited state funds spent on foster care, but it caps the funds available for treatment and prevention.²⁷¹ This reactive structure fails to focus on family preservation and is contrary to both ASFA's stated purpose of not disrupting families unnecessarily²⁷² and AACWA's stated purpose of reunifying them.²⁷³

In addition, studies indicate that providing families with economic, material, and concrete support contributes to more successful reunification and less frequent out-of-home placement.²⁷⁴ Further, a number of studies that show a causal link between poverty and parental rights termination suggest that providing services that address poverty at its roots can save money by "prevent[ing] more expensive out-of-home placement or facilitate[ing] more

269. Eamon & Kopels, *supra* note 34, at 822.

270. *Testimony Submitted by the Nat'l Child Abuse Coal., D.C., to the Subcomm. on Healthy Families & Communities, Comm. on Educ. & Labor, U.S. House of Representatives, regarding the reauthorization of the Child Abuse Prevention and Treatment Act (CAPTA); November 5, 2009, 111th Cong. 3 (2009), available at <http://www.socialworkers.org/advocacy/issues/CAPTACOALHOUSETEST09.pdf>. For example, in 1998, the federal government spent \$1.5 billion on services (including prevention services), but more than six times that amount (\$9.4 billion) on out-of-home placements. Roseana Bess et al., *The Cost of Protecting Vulnerable Children II: What Has Changed Since 1996?*, at viii, OCCASIONAL PAPER NUMBER 46 (The Urban Inst., Washington, D.C.), Feb. 2001, available at http://www.urban.org/uploadedPDF/310071_occa46.pdf (providing extensive documentation of both state and federal spending).*

271. *See* 42 U.S.C. §§ 670-72, 674 (2006). In contrast to the \$2.494 billion the federal government spent on child placement and administration in 2008, it spent approximately \$69 million on the Child Abuse Protection and Treatment Act in 2008. COMM. ON WAYS & MEANS, 110TH CONG., CHILD WELFARE CONTENTS 4 (2008), available at <http://waysandmeans.house.gov/media/pdf/111/s11cw.pdf>. For a discussion of the impact that these federal funds have on state budgets – and in particular on the budget of a sparsely populated, largely rural state such as South Dakota, see Sullivan & Walters, *supra* note 85 (detailing how South Dakota uses the federal funds associated with child removals from American Indian families).

272. *See supra* notes 62-67 and accompanying text.

273. *See supra* notes 51-53 and accompanying text.

274. Eamon & Kopels, *supra* note 34, at 824.

timely reunification.”²⁷⁵ Redirecting funds from out-of-home care to in-home prevention and treatment also can result in a net savings to the government, particularly if the parent has more than one child or if all children in the home are young.²⁷⁶ Prevention and treatment programs also reduce the need for states to react in the future by removing children from their homes.²⁷⁷

E. Addressing Root Causes

Termination of parental rights is inappropriate where a reasonable likelihood exists “that the parent’s unfitness at the time of trial may be only temporary.”²⁷⁸ However, short-term fixes that only temporarily ameliorate parental challenges often result in additional subsequent child removals.²⁷⁹ Government action at higher scales that addresses structural deficits in rural America generally, and those deficits facing rural families specifically, would strengthen these families and their communities. Long-term solutions include investments in transportation, job creation, education, food security, and quality, subsidized childcare in rural areas.²⁸⁰

Addressing the issue of food security, for example, through adequate food assistance, could eliminate the need to remove children from some low-income families. While the U.S. government offers food assistance programs, rural parents face greater challenges to using them because the government distributes the food and services at central locations from which rural

275. *Id.* (citing Mark Chaffin, Barbara L. Bonner & Robert F. Hill, *Family Preservation and Family Support Programs: Child Maltreatment Outcomes Across Client Risk Levels and Program Types*, 25 CHILD ABUSE AND NEGLECT 1269 (2001); Julia H. Littell & John R. Schuerman, *What Works Best for Whom? A Closer Look at Intensive Family Preservation Services*, 24 CHILD. AND YOUTH SERVICES REV. 673 (2002); Jennifer MacLeod & Geoffrey Nelson, *Programs for the Promotion of Family Wellness and the Prevention of Child Maltreatment: A Meta-Analytic Review*, 24 CHILD ABUSE AND NEGLECT 1127 (2000); Antony N. Maluccio, *What Works in Family Reunification*, in WHAT WORKS IN CHILD WELFARE 163 (Miram P. Luger, Gina Alexander & Patrick A. Curtis eds., 2000); Leroy H. Pelton, *The Role of Material Factors in Child Abuse and Neglect*, in PROTECTING CHILDREN FROM ABUSE AND NEGLECT 131 (Gary B. Melton & Frank D. Barry eds., 1994)).

276. *See id.* at 832.

277. NAT’L ADVISORY COMM., *supra* note 225, at 31.

278. *In re C.T.*, 724 A.2d 590, 599 (D.C. 1999).

279. Fraser et al., *supra* note 239, at 336 (noting that between 50% and 75% of children removed from home are eventually returned to their families, but 20% to 40% of these children will again experience removal).

280. *See generally* DAVID L. BROWN & KAI A. SCHAFFT, RURAL PEOPLE AND COMMUNITIES IN THE TWENTY-FIRST CENTURY: RESILIENCE AND TRANSFORMATION (2011); WHITE HOUSE RURAL COUNCIL, JOBS AND ECONOMIC SECURITY FOR RURAL AMERICA (2011) (discussing economic and other challenges in rural America, as well as the Obama administration’s plan for addressing them).

families are spatially removed.²⁸¹ Even when accessible, the programs may be insufficient to alleviate food insecurity.²⁸² In a similar vein, recent data reveal that Temporary Assistance to Needy Families (TANF) is less effective at relieving poverty among nonmetropolitan families than among those in metropolitan areas.²⁸³

Finally, comprehensive and far-sighted solutions are at odds with the current reality of AACWA's short-term mandates. The Act requires states to initiate termination proceedings if a child has been in foster care for fifteen of the previous twenty-two months.²⁸⁴ This short-term assessment ignores the simple reality that poor parents may be unable to overcome the array of challenges contributing to their poverty – and thus their perceived parental inadequacy – in less than two years. For socioeconomically disadvantaged rural parents, overcoming the numerous hurdles associated with spatiality and lack of services may require significant government assistance over a period of years. Even parents who are making significant changes in their lives may be

281. BARBARA WAUCHOPE & ANNE SHATTUCK, CARSEY INST., FEDERAL CHILD NUTRITION PROGRAMS ARE IMPORTANT TO RURAL HOUSEHOLDS 1 (2010), available at http://www.carseyinstitute.unh.edu/publications/IB_Wauchop_Nutrition.pdf (reporting that while 29% of rural households with children participate in at least one federal child nutrition program, 43% of eligible households do not participate in any programs); BARBARA WAUCHOPE & NENA STRACUZZI, CARSEY INST., CHALLENGES IN SERVING RURAL AMERICAN CHILDREN THROUGH THE SUMMER FOOD SERVICE PROGRAM 1 (2010), available at http://www.carseyinstitute.unh.edu/publications/IB_Wauchope_SFSP.pdf (stating that less than one-third of USDA Summer Food Programs are located in rural communities despite the fact that rate of poverty and food insecurity are highest in rural areas and noting lack of transportation and long distances to food service sites as primary impediments' use of programs); Lisa R. Pruitt, *Spatial Challenges to Access USDA Summer Food Programs for Kids*, LEGAL RURALISM BLOG (May 21, 2010, 4:17 PM), <http://legalruralism.blogspot.com/2010/05/spatial-challenges-to-accessing-usda.html> (“Yet . . . rural delivery sites are relatively rare because of the difficulty in achieving economies of scale. Further, even where there are delivery sites, children often cannot reach them because of lack of transportation.”); Tickamyer & Smith, *supra* note 11, at 341 (noting “lower take-up rates” among rural populations of the USDA’s nutrition assistance programs).

282. See Steven Garasky, Lois Wright Morton & Kimberly A. Greder, *The Effects of the Local Food Environment and Social Support on Rural Food Insecurity*, 1 J. HUNGER & ENVTL. NUTRITION 83, 99 (2006); Josephine A. Swanson, Christine M. Olson, Emily O. Miller & Frances C. Lawrence, *Rural Mothers’ Use of Formal Programs and Informal Social Supports to Meet Family Food Needs: A Mixed Methods Study*, 29 J. FAM. & ECON. ISSUES 674, 681 (2008).

283. See LEIF JENSEN, MARYBETH J. MATTINGLY & JESSICA A. BEAN, CARSEY INST., TANF IN RURAL AMERICA: INFORMING RE-AUTHORIZATION 3 (2011), available at <http://www.carseyinstitute.unh.edu/publications/IB-Bean-TANF.pdf> (“[I]n urban America, TANF brings families closer to escaping poverty than in rural America.”).

284. 42 U.S.C. § 675(5)(E) (2006); see also Hilary Baldwin, *Termination of Parental Rights: Statistical Study and Proposed Solutions*, 28 J. LEGIS. 239, 240 (2002).

unable to comply with court-ordered reunification plans within the federally mandated timeframe.

VI. CONCLUSION

As I have indicated in my dissents to other termination cases, the State seems to be running amok, spouting pop psychology and terminating parental rights in cases where it is clearly not necessary to do, particularly in cases of poor and otherwise handicapped parents.²⁸⁵

Justice Springer, dissenting
Deck v. Department of Human Resources,
Division of Child & Family Services (Nev. 1997)

Let us return for a moment to *Winter's Bone* and the plight of the Dolly children.²⁸⁶ As mortified as the typical filmgoer may be about the circumstances in which Ree and her siblings find themselves, no guarantee exists that a temporary placement in a group or foster home would allow them to stay together or serve them better than they are serving themselves, without government assistance.²⁸⁷ Policymakers should bear in mind that the dual threats of removal from the family home and separation of siblings may deter families like Ree's from availing themselves of the limited resources the state has to offer. Surely, destruction of the family unit is not the outcome intended from acceptance of public benefits and social services. Yet such destruction is sometimes a consequence of the links between poverty and place, links that state actors may misunderstand.

America's child protection system requires a new vision – a family-affirming approach that focuses on maintaining the bond between parent and child. To honor rural families in particular, the state must implement place-specific programs that are sensitive to rural parents' needs and which would help them adequately care for their children. This policy shift would preempt the state's need to initiate child removal proceedings in many cases.

285. *Deck v. Dep't of Human Res., Div. of Child & Family Servs. (In re Parental Rights as to Deck)*, 930 P.2d 760, 770 (Nev. 1997) (Springer, J., dissenting).

286. See *supra* note 17 and accompanying text.

287. See Huntington, *Rights Myopia*, *supra* note 16, at 662 (observing that "foster care does not improve the lives of most of the children placed in that system . . . [a]nd there is good reason to believe that foster care is a contributing factor to the poor outcomes studied"). Furthermore, foster homes and shelters may be in dramatically short supply in rural areas. See Scarlet Sims, *Shelter Would Serve Children in 9 Counties*, ARK. DEMOCRAT-GAZETTE, Oct. 24, 2011, at 1B (reporting that in one rural Arkansas county, Newton County, only one foster home is available; in that same nine-county area of mostly nonmetropolitan counties, only one shelter, for girls only, is available for children removed from their parents).

This change also requires a frank acknowledgement that rurality can be disabling;²⁸⁸ rural spatiality, economics, and culture can operate as handicaps like the ones Justice Springer referenced in the *Deck* case.²⁸⁹ When assessing parental fitness, then, the state should recognize both poverty and rurality as critical aspects of context over which the parent may have very little control.

Finally, judges and child services agencies must begin to recognize the distinction between rural manifestations of poverty on the one hand, and willful child neglect on the other. Doing so would minimize child removals based on inaccurate or unfounded presumptions of parental fault. For shattering the bond between parent and child based solely on judgments about poverty, place, or a combination of the two not only undermines particular family units, it devalues rural families and their communities.

288. See Lisa R. Pruitt, *Human Rights and Development for India's Rural Remnant: A Capabilities-Based Assessment*, 44 U.C. DAVIS L. REV. 803, 843 (2011) (arguing that rurality – or geography more broadly – might be viewed as a type of disability in relation to Martha Nussbaum and Amartya Sen's capabilities framework for assessing human well-being).

289. See *supra* notes 187-88, 285 and accompanying text.

