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June 4, 2003 Publication: Lansing City Pulse (MI) Word Count: 1394

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By DANIEL STURM

New questions have risen in the custody case of Jennifer Holey's two children.

Liliandra (21 months) and Pearl (9 months) were taken from the custody of their adoptive parents, Chadd and Tamera Smith of Dewitt, in April, and awarded by the Oakland County Probate Court to an Oakland County couple, who are their distant cousins.

Holey is in prison after pleading guilty to sexually assaulting a 14-year-old girl. After they learned police wanted to question them about the rape, Holey attempted suicide and her husband committed suicide. His mother was convicted of assisted suicide.

The two private adoption agencies that placed the girls in the Smiths' custody are both questioning several arguments in the court ruling.

In April, Oakland County Judge Elizabeth Pezzetti overturned the adoptions by the Smiths, who had been both children's foster parents until a Clinton County judge awarded them permanent custody. In her ruling, Pezzetti said social workers at Lutheran Social Services of Michigan in Lansing and Lutheran Adoption Services in Southfield had deliberately misinformed the Oakland couple, Jonathan and Donna Cromwell, about their adoption rights.

Pezzetti wrote in her April 15 decision that the Oakland couple "encountered nothing but resistance" from the adoption agencies in their efforts to obtain custody of the girls, or even to establish a relationship with them by allowing them to become familiar with them and their home.

The judge argued that social workers repeatedly and wrongfully told the Cromwells that, as cousins twice removed (Donna Cromwell's aunt was Jennifer Holey's grandmother), they did not have a close enough relationship as relatives to give them special consideration under state law. The judge said the social workers advised the Cromwells that they would have to become licensed foster parents in order to be considered for adoption.

The question whether cousins twice removed, or a sixth-degree relationship, would qualify Donna Cromwell as a "relative" is in the center of the debate.

Judge Pezzetti argues that Jennifer Holey and Cromwell are cousins and thus count as relatives. State law not only encourages but also mandates placement with relatives if appropriate applicants come forward. Pezzetti said that the social workers' treatment of the Cromwells as distant relatives with no special status was a "glaring misrepresentation." Pezzetti concluded: "The blatant disregard by [the social workers] of the law and FIA [state Family Independence Agency] policy with regard to relative placements □ is very disturbing to this court."

However, the adoption agencies say they were going by the books. According to the FIA's publication, "Adopting a Child in Michigan," the Cromwells do not qualify as relatives. The FIA manual defines a potential adopting relative as a "person related to the adoptee within the fifth degree by marriage, blood or adoption." The Cromwells' relationship to the two adoptive children is sixth degree.

Christine Rehagen, a program director at Lutheran Social Services, said that FIA employees had frequently reminded her agency that relative relationship was defined as being within the fifth degree range. Rehagen added : "There was no question: If they were very distant relatives they needed to be licensed foster parents like the Smiths were."

Rehagen said that her agency handled the case according to FIA policy and is unaware of having made any mistakes.

She also said that Lutheran Social Services wasn't given the chance to respond to any of the accusations made in court and were not notified of the trial. The Smiths' attorneys also claim that the FIA, the Cromwells' lawyers and the courts never informed the adoption agency about the Oakland County hearing. Judge Pezzetti declined to comment.

As a result of the case, Rehagen said she has requested clarification from the Ingham County FIA office regarding how the relative status will be judged in the future. "Is the Family Independence Agency going to go by the adoption code, which says the fifth degree is considered to be relative, or are they just going to go with the word 'cousin'?"

Ingham County FIA Director Doug Williams was unavailable for comment.

Judge Pezzetti based her decision on the testimony of Donna Cromwell, who criticized the Lutheran Adoption Services' handling of the case. As an example, she said that unlike the Smith's, she was ordered to undergo psychological evaluation.

In her ruling, the judge said that during the April 4 hearing, Wendy Odlum, a foster care monitor at the Ingham County FIA, testified by telephone that this extra examination was a "stalling tactic" by the two Lutheran adoption agencies to withhold overnight visitation rights from the Cromwells.

Kari Mascar, director of Lutheran Adoption Services, denied it. Mascar said no tactics were involved, and that the psychological study was actually requested by the Michigan Children's Institute, which is a part of the FIA. "We contract for the MCI, and so we did what we were requested to do," Mascar said.

Judge Pezzetti also concluded that a home study conducted by Lutheran Adoption Services was biased. The judge quoted testimony presented by Donna Cromwell that a field worker for the adoption agency, Linda Wilkinson, was excessively "badgering" the Cromwells about their desire to adopt Liliandra and Pearl. Pezzetti quoted Cromwell's testimony that the field worker said the girls were "bonded to their foster parents, and that Liliandra had been abused and was fragile."

Mascar, who spoke on behalf of the social worker, said that Wilkinson was by no means a "biased case worker," as the judge alleged. She said that Wilkinson was selected to make the assessment because of her 30 years' experience in the field of adoption.

"Linda was concerned about attachment in this case. So she took the opportunity while meeting with the family to try to educate them on that." Mascar added "It's unfortunate that they thought this was harassment. But I think she was doing what she needed to do to make sure that if the children were placed there, they'd be able to understand their needs, and meet them appropriately."

Rehagen from Lutheran Social Services confirmed that Wilkinson had been assigned to complicated adoption cases in the past because she had a good reputation. "I have not heard anything in any other case that would lead me to believe that Mrs. Cromwell was badgered," Rehagen said .

Judge Pezzetti also quotes the testimony of an FIA worker, who allegedly received an e-mail from Rehagen in October 2002 expressing Rehagen's concerns about the way the case was being handled by Lutheran Social Services. As a result of discussions regarding the e-mail, Lutheran Social Services returned the case to the FIA. Pezzetti mentions that this e-mail had "considerable weight" in the court's decision to favor the Cromwells.

But Rehagen denies having ever sent such a message. She said that she was taken by surprise to see that she was quoted in an adoption court hearing without anybody calling her to verify this information.

Rehagen confirmed that she did recommend turning the case over to the FIA, but for very different reasons. She said that the Cromwells had contacted several people at the Ingham County FIA. "Consequently there was a lot of miscommunication that was complicating the case," Rehagen said. She recommended that her staff be taken "out of the loop" to end the confusion.

Social workers at both agencies have expressed a concern that Oakland County's decision to award custody to the Cromwells may have caused additional and lasting trauma to the children.

"Liliandra was traumatized before she came into foster care. We are very concerned about her emotional state as a result of all this back and forth. She's gotten to be a very confused child as this point," Mascar said.

Mascar pointed out that it was unfortunate that Judge Pezzetti had no knowledge of the level of the girl's condition, because a child-assessment study conducted by her agency for the Clinton County court was not shared during the Oakland hearing.

The Smiths are challenging Judge Pezzetti's decision in the Michigan Court of Appeals. Mascar believes the Court of Appeals needs to act quickly. She said that if the children were returned to the Smiths' home soon, it would be like returning to their families.

"They're responding to the move as if it's a visit, and waiting to see when they're going to go back home to things that are familiar to them. But the longer it takes, the more damage it's going to cause to the children."

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Lansing City Pulse (MI)

Date: June 4, 2003

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