

**SUPREME COURT OF LOUISIANA**

**NO. 06-CJ-2380**

**STATE OF LOUISIANA  
IN THE INTEREST OF R.A.**

**KNOLL, J., dissenting.**

With all due respect, in my view the majority errs in finding the juvenile court’s ruling “that the least restrictive placement for R.A. is a family setting” and specifically disapproving the plan to facilitate a group home placement, revised the Department’s case plan in violation of La. Ch. Code art. 672A. I further find that granting this writ with a per curiam without a full record before us impedes our ability to thoroughly explore the “case plan” of the child. In my view, there is a distinction between what constitutes a case plan and balancing the statutory requirement of placement of the child in the “least restrictive, most family-like, and most appropriate setting”, in the best interest of the child, coupled with the juvenile court’s role to protect the child’s right to thrive and survive.

At any point in a child in need of care proceeding that a child enters the custody of a child care agency, such as the Department, the custodian shall develop a case plan detailing the custodian’s efforts toward achieving a permanent placement for the child. *See* La. Ch. Code arts. 671, 673. The Children’s Code further provides, in pertinent part:

A. The case plan shall be designed to achieve placement in the least restrictive, most family-like, and most appropriate setting available, and in close proximity to the parents’ homes, consistent with the best interest and special needs of the child. The health and safety of the child shall be the paramount concern in the development of the case plan.

B. The case plan shall include at least the following:

(1) A description of the type of home or institution in which the child is

placed, including a discussion of the child's health and safety, *the appropriateness of the placement*, and the reasons why the placement, if a substantial distance from the home of the parents or in a different state, is in the best interest of the child.

(2) A plan for assuring that the child receives safe and proper care, and that services are provided to the . . . child, . . . in order to . . . facilitate the safe return of the child to his own home or other permanent placement of the child, or both, and *address the needs of the child while in foster care*, including . . . a discussion of the appropriateness of the services that have been provided to the child under the plan. When appropriate for a child sixteen or older, the plan shall include a written description of the programs and services which will help the child prepare for the transition from foster care to independent living.

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La. Ch. Code art. 675 (emphasis added).

In developing a case plan, the health and safety of the child shall be the paramount concern. *See* La. Ch. Code arts. 673 and 675A. The Code further provides that the case plan shall be designed to achieve placement in the least restrictive, most family-like and most appropriate setting available consistent with the best interest and special needs of the child. *See* La. Ch. Code art. 675A. Case review hearings are required to be held at least once every six months until the child is permanently placed. *See* La. Ch. Code art. 692B. At the conclusion of the case review hearing the court may either approve the plan as consistent with the health and safety of the child or find that the case plan is not appropriate and order the Department to revise the case plan accordingly. *See* La. Ch. Code art. 700A(2).

The health, safety and best interest of the child **shall** be the paramount concern in all child in need of care proceedings. *See* La. Ch. Code art. 601. This lodestone of the juvenile justice system is meaningless without an opportunity for judicial review. *State ex rel. L.S.*, 01-2215, p. 13 (La. App 4 Cir. 3/20/02), 814 So.2d 601, 608, *writ denied*, 02-0957 (La. 4/17/02), 813 So.2d 414. The juvenile court, in its case review hearing, found the Department's case plan for R.A. was not appropriate and ordered the Department to effectuate the least restrictive and most family-like

setting for R.A.

In its written reasons for judgment, the juvenile court observed that the evidence presented demonstrated that the least restrictive setting for R.A. is a foster family. The Department, without any supporting facts, concluded that R.A. is in need of constant supervision and indicated its intent to place R.A. in a staff-secure, locked therapeutic residential facility – the most restrictive placement available. The Department’s case plan to place R.A. in a restrictive facility was made despite the evidence in the case review report that R.A.’s “emergency” foster family placement has been positive. The Department reported R.A. “is following house rules and is enrolled in High School. He expresses interest in playing football and has gone to football practice.” This same report outlines a history of difficulties R.A. experienced in various group home settings, each lasting approximately one month. The CASA report detailed R.A.’s successful acclimation in the foster home and concluded it is an extremely different environment from the group home setting he is used to and his behavior has improved dramatically. I find it significant the Department’s explanation for its limited efforts in searching for a foster family was that a case manager in another region might be upset if a youth from the Baton Rouge region was using a foster home placement in another region. This explanation does not appear to support a decision made for the best interest of the child, but rather for administrative reasons of the Department. This gives me pause. The Department policy manual itself declares placement of a child in a facility shall only be made when no available relative or foster placements can meet the child’s needs. Thus, the juvenile court did not approve the case plan because the Department did not make reasonable efforts to achieve the least restrictive, most family-like and most appropriate setting as legislatively mandated. An appellate court cannot set aside a

juvenile court's findings of fact in the absence of manifest error or unless those findings are clearly wrong. *State in the Interest of S.M.W.*, 00-3277, p. 14 (La. 2/21/01), 781 So.2d 1223, 1233.

I do not find the juvenile court's order disapproving of the Department's case plan and holding the matter open determined a particular placement for R.A., thereby revising the case plan in violation of La. Ch. Code articles 672A and 700. *See State ex rel. L.C.B.*, 01-2441, p. 10 (La. 1/15/02), 805 So.2d 159, 165. In that matter, the juvenile court made a particular placement choice by ordering the child be moved to a certified foster home within five days. Rather, in the matter *sub judice*, the juvenile court disapproved of the case plan; critical to review of the plan is a determination of the appropriateness of the child's placement. Although the minutes reflect the juvenile court judge mentioned Hope Haven specifically in her order disapproving the Department's plan, her written reasons, read overall, demonstrate her ruling only disapproved the case plan, not a specific placement for R.A. The juvenile court amply supported its determination that the Department violated statutory mandate to achieve placement in the most appropriate and family-like setting *in the best interest of the child*. To reverse the juvenile court's decision would allow untrammelled discretion to the state agency where there is a showing of impairment of the child's best interest. The judicial system is required to protect children's rights to thrive and survive. *State in the Interest of S.M.*, 98-0922, p. 14 (La. 10/20/98), 719 So.2d 445, 452. Although the court may not revise the plan or make particular placements, the court remains the ultimate authority over a child's placement. *L.C.B.*, 01-2441 at p. 11, 805 So.2d at 165. It is critical that the State meet the best interest of this child, as statutorily mandated. R.A., who has been in custody since February 2003, will turn 17 in January, 2007. For these reasons, I would deny the writ.

