MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

1109

2005 HOUSE HUMAN SERVICES

HB 1109

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1109

House Human Services Committee

☐ Conference Committee

Hearing Date: 1-05-05

Tape Number	Side A	Side B	Meter #
Blank			

Committee Clerk Signature: 

Minutes:

Attendance: 12 members present 0 absent

Chairman Price: We will open the hearing on HB 1109.

Julie Hoffman, NDDHS: I am here today to testify in favor of HB 1109. (See attached #1)

Representative Weisz: Why does this need to be implemented, what is breaking down that this needs to done?

Julie Hoffman: Each district is different, sometime there are copies - some don't provide it. Regarding to the parent, Juvenile Services or county itself, that is the purpose of drafting this bill.

Representative Devlin: Why is the notice not given?

Julie Hoffman: Occasionally notice - petition of service is late in responding to letter of the court.

Representative Devlin: How do we know they get the notice?

Julie Hoffman: It will be mailed, in case of termination of parental rights, I will receive the notice.

Representative Nelson: How many times a year does this happen?

Julie Hoffman: Over 100 times, determining parental rights.

Chairman Price: Is there anyone else here testifying in favor of HB 1109. Anyone opposed to HB 1109? Hearing none, this hearing is closed.

Chairman Price: Is there any further discussion?

Representative Weisz: I am questioning the procedure on notification.

Representative Damschen: Are the departments involved aware of the procedures?

Chairman Price: The government entities are aware of these procedures.

Chairman Price: Anyone have a motion for the chair?

Representative Porter: I move a Do Pass.

Representative Weisz: Second

Chairman Price: Any further discussion on HB 1109. Roll Call on a **Do Pass** motion on HB 1109.

12 Yes **0 No** **0 Absent** **DO PASS** **Carrier: Rep. Pietsch**

Date: 1-05-05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1109

House Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Rep. Porter Seconded By Rep Weisz

Representatives	Yes	No	Representatives	Yes	No
Chairman C.S.Price	x		Rep.L. Kaldor	x	
Rep.G. Kreidt	x		Rep.L. Potter	x	
Rep.C. Damschen	x		Rep.S. Sandvig	x	
Rep.W.R. Devlin	x				
Rep.J.O. Nelson	x				
Rep. V. Pietsch	x				
Rep.Todd Porter	x				
Rep.G. Uglem	x				
Rep.R. Weisz	x				

Total (Yes) 12 No 0

Absent n/a

Floor Assignment Rep. Pietsch

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1109: Human Services Committee (Rep. Price, Chairman) recommends **DO PASS** (12 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1109 was placed on the Eleventh order on the calendar.

2005 SENATE JUDICIARY

HB 1109

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1109

Senate Judiciary Committee

☐ Conference Committee

Hearing Date February 15, 2005

Tape Number	Side A	Side B	Meter #
1		X	2000 -3000

Committee Clerk Signature Mina L Solberg

Minutes: Relating to notice to custodians of minor children under the Uniform Juvenile Court Act.

Senator John Syverson, Vice Chairman called the Judiciary committee to order. All Senators were present except for Sen. Traynor. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Julie Hoffman - Administrator of Adoption Services for the ND Dept of Human Services. (meter 2000) Gave Testimony - Att. # 1.

Senator Triplett asked if this was not a requirement of the law already? No. On some occasions we get the notices and some we do not. **Sen. TrenbeathI** stated thet he would have thought in all cases where there was legal custody of somebody that notice would provided, is that what you are saying is not the case? Where their is a proposed custodian, in most of the cases the dept. has the concert, the county or social services may be the custodian and the Dept is the proposed custodian once the termination of parental rights has been granted. It is in some of

these cases where we have not been given notice, prior the termination of parental rights hearings where the dept. appealed the results in termination rights order due to language they were concerned about in the order. **Sen. Trenbeath** discussed the language of the order with Julie. Were either cases of appeal successful? Yes.

Senator Triplett asked for the situations of the two cases. Julie will provide it. Senator Syverson questioned how the adoption process is working. (meter 2400) This is a separate act, not relating to this issue.

Testimony in Opposition of the Bill:

none

Senator John Syverson Vice Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1109

Senate Judiciary Committee

☐ Conference Committee

Hearing Date February 23, 2005

Tape Number	Side A	Side B	Meter #
1	X		-1,241-1559

Committee Clerk Signature Jerry Kelsch

Minutes:

Chairman Traynor called the committee to order to discuss HB 1109. All Senators were present with the exception of Senator Triplett.

The committee asked the intern to do some research on a Supreme Court case in reference to HB 1109, and present the information to the committee members. Action will be deferred on HB 1109 until the following week.

Chairman Traynor closed the meeting on HB 1109.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1109

Senate Judiciary Committee

❑ Conference Committee

Hearing Date February 28, 2005

Tape Number	Side A	Side B	Meter #
2		X	923 - 1200

Committee Clerk Signature Mona L Solberg

Minutes: Relating to notice to custodians of minor children under the Uniform Juvenile Court Act. **Chairman Traynor called the committee to order to discuss HB 1109. All Senators were present. The Committee did the following:**

Discussed the two Human Service cases where they did not get notice. **Sen. Nelson** question why the legislature (meter 975) is micro managing child legal services/ **Sen. Trenbeath** state that there does not need to be a law for everything. Why would you not notify a proposed custodian? Apparently the didn't but why? Sounds like this was a mistake **Senator Triplett** replied. Discussion of common practice of notification.

Senator Hacker made the motion to Do Not Pass and **Sen. Nelson** seconded it. All members were in favor and motion passes.

Carrier: **Senator Hacker**

Chairman Traynor closed the meeting on HB 1109.

Date: 2/28/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1109

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Not Pass

Motion Made By Senator Hacker Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Hacker

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1109: Judiciary Committee (Sen. Traynor, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1109 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1109

House Human Services Committee

House Bill 1109

January 5, 2005

Chairman Price and members of the House Human Services Committee, I am Julie Hoffman, Administrator of Adoption Services for the ND Department of Human Services. I am here today to present testimony in favor of the passage of HB 1109.

The Department at the request of the Attorney General's office drafted House Bill 1109. It had been noted that there were a number of cases where the Department, a proposed custodian of a child, was not given notice prior the termination of parental rights hearing. In at least two cases, the Department appealed the resulting order, due to language that was not acceptable in the termination of parental rights order. Had notice and a copy of the petition been provided prior to the hearing, an appeal may not have been required.

Essentially, this bill will require that notice be given to any proposed custodian of a child in a proceeding under the Uniform Juvenile Court Act. This would include, in addition to the Department, any county social service office or child placing agency. The party initiating the action will give the notice. This would allow the proposed custodian to respond to the petition, if so desired.

The Department supports the passage of HB 1109. I would be happy to answer any program questions of the committee.

Att #1

Senate Judiciary Committee
House Bill 1109
February 15, 2005

Chairman DeKrey and members of the Senate Judiciary Committee, I am Julie Hoffman, Administrator of Adoption Services for the ND Department of Human Services. I am here today to present testimony in favor of the passage of HB 1109.

The Department at the request of the Attorney General's office drafted House Bill 1109. It had been noted that there were a number of cases where the Department, a proposed custodian of a child, was not given notice prior to the termination of parental rights hearing. In at least two cases, the Department appealed the resulting order, due to language that was not acceptable in the termination of parental rights order. Had notice and a copy of the petition been provided prior to the hearing, an appeal may not have been required.

Essentially, this bill will require that notice be given to any proposed custodian of a child in a proceeding under the Uniform Juvenile Court Act. This would include, in addition to the Department, any county social service office or child placing agency. The party initiating the action will give the notice. This would allow the proposed custodian to respond to the petition, if so desired.

The Department supports the passage of HB 1109. I would be happy to answer any program questions of the committee.

Senate Judiciary Committee

House Bill 1109

February 16, 2005

Vice Chairman Syverson and members of the Senate Judiciary Committee, I am Julie Hoffman, Administrator of Adoption Services for the ND Department of Human Services. I am providing additional information as requested by the committee related to the testimony I presented on Tuesday, February 15 in favor of the passage of HB 1109.

The committee had requested the sites of cases referenced in my testimony. Upon researching this, I was able to identify one case, which did go to the Supreme Court - In the Interest of C.R.H., 2000 ND 222, 620 N.W.2d 175. An additional case was resolved at the District Court level, and although the issues of concern did not include the notice issue, because the Department was provided notice in that case, we were able to successfully intervene at the District Court level.

I hope this information is helpful in your further consideration of HB 1109.

HB 1109

Westlaw.

620 N.W.2d 175
620 N.W.2d 175, 2000 ND 222
(Cite as: 620 N.W.2d 175)

C

Supreme Court of North Dakota.
In the Interest of C.R.H., a child.
Vincent Ament, Petitioner,
v.
C.H. and M.H., Respondents and Appellees.
North Dakota Department of Human Services,
Intervenor and Appellant.
No. 20000228.

Dec. 21, 2000.

County agency brought proceeding to terminate mother's parental rights. Following entry an order that, pursuant to a stipulation by mother, terminated parental rights to child on condition that mother receive limited visitation privileges before and after any adoption, state Department of Human Services moved to intervene. The District Court, Stutsman County, Southeast Judicial District, John T. Paulson , J., denied motion. Department appealed. The Supreme Court, Maring, J., held that: (1) department's appeal was timely; (2) department had right to intervene over a year after entry of termination order; and (3) governing statutes do not vest any discretionary authority upon a court entering a decree of parental termination to provide visitation rights or other privileges to terminated parent.

Reversed and remanded with directions.

West Headnotes

[1] Infants ⚿244.1
211k244.1 Most Cited Cases
Statutory 30-day time for appeal from final decision in proceeding brought under Uniform Juvenile Court Act is not absolute, and Supreme Court can grant extensions of time for filing an appeal under the statute. NDCC 27-20-56, subd. 1.

[2] Infants ⚿244.1
211k244.1 Most Cited Cases
Timeliness of state agency's appeal from juvenile court's denial of motion to intervene in termination of parental rights proceeding was governed by rule requiring that appeals in civil cases be filed within 60 days of service of the notice of entry of judgment or order appealed from, rather than by statutory 30-day period for appealing final decisions in proceedings under Uniform Juvenile Court Act, where affidavit that agency filed with notice of appeal stated that agency had only received actual notice of order five days earlier. NDCC 27-20-56, subd. 1; Rules App.Proc., Rule 4(a).

[3] Infants ⚿252
211k252 Most Cited Cases
Findings of fact made by the trial court in considering motion by Department of Human Services to intervene in termination of parental rights proceeding would be reviewed under the clearly erroneous standard, but ultimate question of whether Department had a right to intervene in action was a question of law that was fully reviewable. Rules Civ.Proc., Rules 24(a), 52(a).

[4] Infants ⚿200
211k200 Most Cited Cases
State agency that was designated as child's custodian in order terminating mother's parental rights had the right, over a year after entry of termination order, to intervene in that proceeding to challenge part of order granting mother visitation rights, where child had not yet been placed for adoption and court had established no other permanent living arrangement, termination order required child to be returned to court within one year if child had not yet been adopted, and statute mandated child's return to court under such circumstances. NDCC 27-20-47; Rules Civ.Proc., Rule 24(a).

[5] Statutes ⚿188
361k188 Most Cited Cases
When a statute is unambiguous, Supreme Court applies the plain language.

[6] Adoption ⚿14
17k14 Most Cited Cases

[6] Infants ⚿221
211k221 Most Cited Cases
Statutes relating to termination of parental rights and adoption do not vest any discretionary authority upon a court entering a decree of parental termination to provide visitation rights or other privileges to the terminated parent. NDCC 14-15-14 , subd. 1, par. a, 27-20-46.

[7] Infants ⚿221
211k221 Most Cited Cases

[7] Infants ⚿254
211k254 Most Cited Cases
Order terminating mother's parental rights, pursuant to mother's stipulation to termination of rights on condition that she receive limited visitation privileges before and after any adoption, was unauthorized under governing statutes and would thus be vacated. NDCC 14-15-14, subd. 1, 27-20-46.
***176** Thomas E. Merrick, Merrick & Schaar Law Firm, Jamestown, ND, for respondents and appellees.

Jean R. Mullen, Assistant Attorney General, Bismarck, ND, for intervenor and appellant.

MARING, Justice.

[¶ 1] The North Dakota Department of Human Services ("Department") appealed from an order denying the Department's post-judgment motion to intervene in a parental termination proceeding and to amend the trial court's order terminating M.H.'s parental rights. We hold the trial court erred in denying the motion to intervene. We further hold the trial court erred in awarding visitation for M.H. in its parental termination order. We, therefore, reverse the order denying intervention and remand with instructions the trial court vacate its order terminating parental rights and conduct further proceedings on the merits of the petition for termination.

[¶ 2] In October 1998, the Stutsman County Department of Social Services filed a petition to terminate the parental rights of M.H. to her natural child C.R.H. After the petition was filed, M.H. stipulated her child was a deprived child and the cause of the deprivation was likely to continue. M.H. agreed to the termination of her parental rights on the condition that she would receive limited visitation privileges with the child. In accordance with the stipulation, the trial court entered an order on December 30, 1998 terminating the parental rights of M.H. with the condition that "[M.H., the natural mother] shall have the right to visit with the child on his birthday, on or near major holidays, and at significant family events such as weddings or funerals, before and after any adoption." The court placed the child in the custody of the Department's executive director.

[¶ 3] On January 5, 2000 the Department filed a motion to intervene and a motion to amend the court's order, asserting the court did not have authority to award visitation to a person whose parental rights were being terminated and requesting the court to remove the visitation provision from the termination order. On January 7, 2000 the district court granted the Department's motion to intervene. After conducting two hearings, the trial court ***177** entered an order on June 5, 2000, setting aside the previous order granting the motion to intervene and denying the Department's motion to amend the parental termination order. On August 7, 2000, the Department filed a notice of appeal.

I

[1] [¶ 4] The order setting aside the trial court's original grant of the motion to intervene was entered on June 5, 2000 and the Department did not file its notice of appeal until August 7, 2000, 63 days after entry of the order. Section 27-20-56(1), N.D.C.C., provides for appeals from final decisions in proceedings brought under the Uniform Juvenile Court Act:

> An aggrieved party, including the state or a subdivision of the state, may appeal from a final order, judgment, or decree of the juvenile court to the supreme court by filing written notice of appeal within thirty days after entry of the order, judgment, or decree, or within any further time the supreme court grants, after entry of the order, judgment, or decree....

The statutory 30-day time for appeal is not absolute and this Court can grant extensions of time for filing an appeal under the statute. *In Interest of M.M.S.*, 449 N.W.2d 574, 575 (N.D.1989). In the *M.M.S.*, 449 N.W.2d at 576 decision, this Court,

following our earlier direction in *Heitkamp v. S.L.*, 338 N.W.2d 834 (N.D.1983), stated:

> We equate our statutory power to grant further time for an appeal under NDCC 27-20-56(1) with our rulemaking power which established the time for an appeal in a civil case. NDRAppP 4(a). This administers the need for finality in juvenile cases, including a termination of parental rights. It does so without treating a juvenile case differently than other civil cases for appellate procedure.

[2] [¶ 5] Under N.D.R.App.P. 4(a), an appeal in a civil case must be filed within 60 days "of service of notice of entry of the judgment or order appealed from." Service of the notice of entry of the order is the trigger which starts the running of the time to file an appeal under N.D.R.App.P. 4(a). In this case there was no service of notice of the entry of the trial court's order. The Department's attorney filed an affidavit with the notice of appeal, stating she received actual knowledge of the trial court's order "through a phone call to the Stutsman County Clerk of Court on August 2, 2000." The filing of the affidavit constitutes record evidence of the Department's actual notice of the order on August 2, 2000 and, consequently, the running of the 60-day period to file a timely notice of appeal began to run on that date. *See* N.D.R.Civ.P. 58(b); *Gierke v. Gierke,* 1998 ND 100, ¶ ¶ 6-12, 578 N.W.2d 522. Consequently, the Department's appeal is not untimely under Rule 4(a). We, therefore, conclude we have jurisdiction to review this order.

II

[3][4] [¶ 6] Although the trial court entered its order terminating the parental rights of M.H. on December 30, 1998, the Department did not move to intervene until January 7, 2000, more than one year later. The Department's substantial delay is perplexing and difficult to justify, considering the trial court placed custody of the child with the Department for the express purpose of placing the child for adoption. The Department moved to intervene as an intervention of right under N.D.R.Civ.P. 24(a). In reviewing the trial court's consideration of this motion, we review any findings of fact made by the trial court under the clearly erroneous standard of N.D.R.Civ.P. 52(a). *Fisher v. Fisher,* 546 N.W.2d 354, 355 (N.D.1996). However, the ultimate question of whether the Department has a right to intervene in the action is a question of law that is fully reviewable. *Id.*

[¶ 7] The trial court provided in its termination order "[I]n the event the child ***178** has not been adopted within one year from the date of the Order ... this matter shall be brought back before the Juvenile Court for further review and disposition." The trial court is authorized under N.D.C.C. § 27-20-47 to commit a child to the custody of the Department's executive director upon entering an order terminating the parental rights of the child's parent and, as amended effective August 1, 1999, the statute provides:

> 3. If the child is not placed for adoption within twelve months after the date of the order and a legal guardianship or other planned permanent living arrangement for the child has not been established by a court of competent jurisdiction, the child must be returned to the court for entry of further orders for the care, custody, and control of the child.

More than one year after the termination of the parental rights of his natural mother, C.R.H. has not been placed for adoption, and we are not aware of any legal guardianship or other permanent living arrangement having been established by the court. Under these circumstances, the Department, as the designated custodian of the child, is obligated under the statute, as well as under the court's parental termination order, to return to the court for further consideration of the matter. The Department, as custodian, is given a mandate to seek the court's review of the custody, care, and control issues involving this child. Furthermore, the issue raised by the Department, whether a trial court can provide visitation to the natural parent in a parental termination order, implicates important policy issues.

[¶ 8] In view of the court's order of termination requiring the child to be returned within one year from the date of the order if the child was not yet adopted and in view of the mandate for review provided under N.D.C.C. § 27- 20-47, we conclude the Department, as a matter of right, had standing to bring the issues relating to termination of parental rights and custody to the court for reconsideration. Under these circumstances, we hold the trial court erred in denying the Department's motion to intervene.

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III

[5][6] [¶ 9] Section 27-20-46, N.D.C.C., [FN1] is very clear in declaring the finality of a decree of parental termination which ends all legal rights and obligations between the parent and child:

> FN1. The trial court's order terminating the parental rights of M.H. was entered on December 30, 1998. This provision was amended, effective August 1, 1999, on matters not relevant to this appeal, and the quoted language was not changed.

> An order terminating parental rights of a parent terminates all his rights and obligations with respect to the child and of the child to or through him arising from the parental relationship. The parent is not thereafter entitled to notice of proceedings for the adoption of the child by another nor has he any right to object to the adoption or otherwise to participate in the proceedings.

The statute providing for adoption, N.D.C.C. § 14-15-14(1)(a), is equally clear and decisive:

> A final decree of adoption and an interlocutory decree of adoption which has become final ... have the following effect ... to relieve the natural parents of the adopted individual of all parental rights and responsibilities, and to terminate all legal relationships between the adopted individual and the individual's relatives, including the individual's natural parents, so that the adopted individual thereafter is a stranger to the individual's former relatives for all purposes....

These statutes are clear on their face. When a statute is unambiguous, we apply the plain language. *State v. Hafner,* 1998 ND 220, ¶ 10, 587 N.W.2d 177. These statutes do not vest any discretionary authority upon a court entering a decree of parental termination to provide visitation ***179** rights or other privileges to the terminated parent. Section 27-20-46, N.D.C.C., requires an unconditional termination of all legal rights and obligations of the terminated parent with respect to the child.

[¶ 10] A similar issue was presented to the Illinois Appellate Court in *In re M.M.,* 226 Ill.App.3d 202, 168 Ill.Dec. 287, 589 N.E.2d 687, 690 (1992). The court was asked to review a decision of the juvenile court which terminated parental rights and appointed a guardian with limited authority to arrange an adoption by which the adoptive parents would consent to continued visitation or contact between the adopted child and the biological parents. In concluding the juvenile court did not have authority to make the adoption contingent upon the biological parents' right to visitation, the Illinois Appellate Court stated:

> [A]llowing the court to limit, restrict, or make conditional the order appointing the guardian with the power to consent to adoption, is tantamount to allowing the court to limit, restrict, or make conditional the termination of parental rights.
>
> ....
>
> The finality of an order terminating parental rights should be of primary concern since the termination order is the first step in the adoption procedure and there is a strong public policy favoring finality and stability in adoptions. If we were to allow for a conditional termination of parental rights, it would leave the question of termination of parental rights open to attack indefinitely, thereby jeopardizing the entire adoption scheme.

In re M.M., 168 Ill.Dec. 287, 589 N.E.2d at 691-692 (citation omitted). Affirming this decision, the Illinois Supreme Court in *In re M.M.,* 156 Ill.2d 53, 189 Ill.Dec. 1, 619 N.E.2d 702, 713 (1993), stated:

> [A]doption results in a complete severance of the parent-child relationship. Appellants cite to no authority to support the conclusion that biological family ties continue to receive protected status in the face of an adoption....
>
> Once an adoptive placement is determined to be in the best interests of the child, duties and responsibilities with respect to the care, custody and control of that child vest, solely, in the adoptive parents. It then becomes the right of the adoptive parents to decide whether to permit or deny continued contact with the child's biological family.

[¶ 11] The Court of Appeals of New York in *Matter of Gregory B.,* 74 N.Y.2d 77, 544 N.Y.S.2d 535, 542 N.E.2d 1052, 1058-59 (1989), recognized that allowing biological family members enforceable contacts or visitation with an adopted child is an issue for the legislature, not the courts:

> [W]e are not unmindful of the psychological

harm that may possibly result from severing the bonds between a child and his or her biological parent, particularly where the child is older and has strong emotional attachments to the birth family. Such concerns have been increasingly well documented in recent years, prompting some to advocate "open" adoptions in which the court supplements an order of adoption with a provision directing that the adopted child have continuing contacts and visitation with members of his or her biological family.

[T]he "open" adoption concept would appear to be inconsistent with this State's view as expressed by the Legislature that adoption relieves the biological parent "of all parental duties toward and of all responsibilities for" the adoptive child over whom the parent "shall have no rights." Although adoptive parents are free, at their election, to permit contacts between the adopted child and the child's biological parent, to judicially require such contacts arguably may be seen as threatening the integrity of the adoptive family unit. In any event, "open" adoptions are not presently authorized. If they are to be established, ***180** it is the Legislature that more appropriately should be called upon to balance the critical social policy choices and the delicate issues of family relations involved in such a determination.

(Citations omitted.) A year later, the New York legislature passed a statute expressly allowing a conditional surrender of parental rights of children in foster care. McKinney's Cons.Laws of N.Y., Book 52A, Social Services Law § 383 c., 1995. Referring to this statute, the Court of Appeals of New York, in *Matter of Jacob,* 86 N.Y.2d 651, 636 N.Y.S.2d 716, 660 N.E.2d 397, 404 (1995), concluded the new law "expressly permits parties to agree that the biological parent will retain specified rights--such as visitation with the child--*after* the adoption, thereby authorizing 'open adoptions' for the first time in this State."

[7] [¶ 12] Unlike the New York legislation, our current adoption statutes do not expressly authorize court-ordered visitation or other contacts between the biological parents and the adopted child. [FN2] Under N.D.C.C. § 27- 20-46, a decree terminating parental rights severs all legal ties between the natural parent and the child. There is no provision for conditional parental termination under the statute. Likewise, under N.D.C.C. § 14-15-14(1), a decree of adoption terminates all legal relationships between the adopted person and his or her natural parents. In this case, M.H. stipulated to a termination of her parental rights upon the condition that the termination decree would give her rights of visitation upon the child's adoption. Having concluded our statutes do not authorize such a conditional parental termination, we must vacate the trial court's parental termination order.

FN2. However, when a parent files a petition to relinquish parental rights to an identified adoptive parent, under N.D.C.C. § 14-15.1-02, our "open adoption" procedure, a report of agreements between the parties, including agreements "which relate in any way to the future conduct of any party with respect to the child" must be filed with the court. N.D.C.C. § 14-15.1-05. The identified adoptive parent has 90 days after entry of the order for relinquishment to file for adoption under N.D.C.C. ch. 14-15. N.D.C .C. § 14-15.1-07. An order under N.D.C.C. ch. 14-15.1 terminates the relationship of the birth parent and the child. N.D.C.C. § 14-15.1-03(4). The present case does not arise under N.D.C.C. ch. 14-15.1.

IV

[¶ 13] The order denying the Department's motion to intervene and to amend the termination decree is reversed and the case is remanded with directions the trial court vacate the December 30, 1998 parental termination order and conduct further proceedings on the merits of the petition to terminate M.H.'s parental rights.

[¶ 14] VANDE WALLE, C.J., NEUMANN, SANDSTROM, KAPSNER, JJ., concur.

620 N.W.2d 175, 2000 ND 222

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