Maria L.'s Story[1]

*M*aria L. is an undocumented Guatemalan native who lived in Nebraska. Her native language was Quiche, an indigenous language of Guatemala. Maria had four children. Two of her children lived with her in the United States and her other two children lived back home in Guatemala. Her youngest, Angelica, was born premature in 2004 with an array of problems, including respiratory issues. Maria sought hospital assistance when Angelica was one month old and voluntarily signed up for Healthy Starts, a Nebraska State Department of Health and Human Services (DHHS) program, in order to receive guidance on how to best care for her daughter. In 2005, Maria took Angelica to the hospital for emergency treatment related to her daughter's respiratory problems. The hospital treated Angelica and, following the hospital visit, she was doing better. When Angelica was discharged, hospital employees told Maria L. something that she did not understand. The hospital employees never determined Maria's native language and only communicated with her in English and possibly some Spanish. Maria was limited English proficient and did not speak or understand much Spanish.

Maria was told to bring the infant back for a follow-up visit, but due to the language barrier missed the appointment. Maria understood that she should return to the hospital if Angelica did not get better. Since Angelica recovered by following the treatment she was prescribed at the hospital, Maria did not return for the follow-up visit. Hospital employees never communicated to Maria that she needed to return to the hospital nor did they communicate to her the consequences of not returning to the hospital with Angelica for a checkup. When she failed to bring Angelica back to the hospital for the follow-up visit, a Healthy Starts employee was sent to check on Angelica and called the State DHHS to report abuse and neglect based upon the missed follow-up doctor's appointment. The State DHHS worker came to Maria's home accompanied by another uniformed official whom Maria believed to be an immigration officer. She was terrified and when asked who she was, Maria told them she was the babysitter. After determining that she was the children's

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[1] In re Interest of Angelica L., 277 Neb. 984 (2009).

mother and not the babysitter, the officers arrested Maria for "obstructing a government operation." The abuse and neglect report filed that day led to the opening of a child abuse and neglect case that resulted in Maria's two youngest children who were with Maria in the United States, Angelica and Daniel, being taken into custody by the State. The children were taken to the hospital and then released into foster care.

Shortly after Maria's arrest, she was taken into custody by United States immigration officials and was placed in detention to await removal proceedings. A notice of a hearing on the neglect petition, written in both English and Spanish, was given to Maria while she was in immigration detention. At the hearing, Maria was not provided a Quiche interpreter, only one who spoke Spanish, and she pled guilty to neglect in order to avoid a prolonged trial and in an attempt to get her children back faster.

A reunification the case plan was put in place. Shortly after the neglect trial, Maria was deported. A case worker called Maria in Guatemala and read her the case plan in Spanish over the phone. She never received a written copy of the case plan or an oral interpretation of the plan in her native language. During her time in detention and once she was deported, she was unable to comply with the reunification plan, which required regular calls and physical visitation. With the help of a Guatemalan priest, Maria got information about what the case plan required of her and with his help did what she could to comply while she was in Guatemala. Based on Maria's failure to strictly comply with the case plan, the State filed a motion to terminate parental rights. Maria received a humanitarian visa from the U.S. Department of Homeland Security to come to the termination of parental rights hearing, but she lost her case.

The trial court determined that Maria was an unfit parent, stating "Maria's fear of deportation serves as no excuse for her failure to provide the minimum level of health care to her children." In response to Maria being unable to comply with the case plan, the court stated that "being in the status of an undocumented immigrant is, no doubt, fraught with peril and this would appear to be an example of that fact." The court found that it was in the best interests of the children to stay with the foster parents. The court discussed the extent to which Daniel and Angelica would receive better opportunities in the United States as compared to Guatemala.

Maria's termination of parental rights case was appealed to the Nebraska Supreme Court, which issued a unanimous decision overturning the trial court's rulings. The appeal raised several legal issues, including an insufficient weight given to the fundamental importance of the parent-child bond and a violation of Maria's due process rights. As discussed later in this volume, termination of parental rights may occur only where there is clear and convincing evidence that the parent is unfit and when there are no clearly demonstrated efforts of reunification. Best interests of the children should not be based solely on one environment being 'superior' over the other. Further, Maria's due process right to sufficient notice was violated when DHHS failed to adequately communicate the case plan in the mother's native language. DHHS, the courts,

and the hospital in this case all failed to provide Maria meaningful language access as required under Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin.

The Nebraska Supreme Court stated that the trial court must find by clear and convincing evidence that the parent is unfit. Further, the Court stated that it is Maria's constitutional right to raise her children in her own culture and with the children's older siblings in Guatemala. The Nebraska Supreme Court articulated a presumption that it is in the best interests of the child to be in the care and custody of a fit parent. The Court stated that there is an

"[o]verriding presumption that the relationship between parent and child is constitutionally protected and that the best interests of a child are served by reuniting the child with his or her parent. This presumption is overcome only when the parent has been proven unfit. The right applies to all immigrant parents, without regard to their immigration status, whether or not the parent is deported from the United States."[2]

The Court found that while Maria's lack of medical judgment was concerning, it was not sufficient to warrant the termination of parental rights. "The law does not require the perfection of a parent." The Court further noted that Maria attempted to provide her daughter with medical care on several occasions despite her overwhelming fear of being deported.

The Nebraska Supreme Court importantly ruled that neither immigration status nor unequal country status should be considered under the best interest standard.

"Whether living in Guatemala or the United States is more comfortable for the children is not determinative of the children's best interests. We reiterate that the best interest of the child standard does not require simply that a determination be made that one environment or set of circumstances is superior to another. The fact that the State considers certain adoptive parents, in this case the foster parents, better or this environment better, does not overcome the commanding presumption that reuniting the children with Maria is in their best interest – no matter what country she lives in. As we have stated, this court has never deprived a parent of the custody of a child merely because of financial or other grounds a stranger might better provide."[3]

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[2] In re Interest of Angelica L., 277 Neb. 984 (2009).
[3] *Id.*