Contact between parents and children where CPS care is supposed to be long lasting

Erik Strand, September 27 2014

Introduction

In this article, I will examine how the assumption that the Norwegian CPS will have the care for a child for a long time, influences the amount of contact between the child and its parents. When fylkesnemnda, the entity that makes decisions in CPS cases, decides that the CPS shall take over the care for the children, fylkesnemnda also decides how much contact there shall be between child and parents. The contact decided by fylkesnemnda represents a minimum of contact, and it is stated in the preparatory work for the CPS law that a decision in fylkesnemnda shall not prevent a more extensive contact. However, the amount of contact shall not stride against the premises for the decision.

One of the things which fylkesnemnda shall take into consideration when deciding how much contact there shall be is how long the CPS is supposed to have the care for the child. A decision that the CPS shall have the care for the child is a temporary decision. If the fylkesnemnda later finds that the parents can provide good enough care for the child, the CPS law § 4-21 first part, first sentence states that fylkesnemnda shall bring the decision that the CPS shall have the care for the child to an end. In a Supreme Court decision[1] from 2012, referred in Rt. 2012 s. 1832 (Rt. Is short for Rettstidende, a book series that refers Supreme Court decisions), Supreme Court cited NOU: 12 p. 211 (a report by a committee given the mandate to examine what kind of changes there should be in CPS politics). Supreme Court cited the following as a valid description of the state of the law:

"The extent of contact hence depends on what kind of placement it is. In temporary placements, there shall be frequent contact in order to make it easier to move the child back to the parents. In more long lasting placements, contact shall be less frequent. In these cases, the purpose of contact is providing the child a cognitive/intellectual understanding of who the biological parents are, not creating or maintaining an emotional affiliation towards the parents."

Such a statement from Supreme Court – that the purpose of contact when the child is supposed to be placed in foster home for long time is "providing the child a cognitive/intellectual understanding of who the biological parents are" – says a lot of what kind of ideas present in Norway's highest court. The goal of the rest of this article is twofold. First, I will scrutinize what the state of the law is when it comes to contact between children and parents in cases where the transfer of the care for the child to the CPS is supposed to be

[1] Judges in the case were Knut H. Kallerud, Clemet Endresen, Kristin Normann and Jens Edvin A. Skoghøy

long term. Thereafter, I will give examples that fylkesnemnda has taken the same standpoint as Supreme Court – that the purpose of contact in long term placement shall be giving the child " a cognitive/intellectual understanding of who the biological parents are".

The state of the law in contact cases

Contact between the child and the parents after the CPS has taken over the care for the child, is regulated by the CPS law § 4-19. In English translation, this paragraph says:

§ 4-19. Right to contact. Hidden address.

Children and parents have, if nothing contrary has been decided, the right to have contact with each other.

When fylkesnemnda has made the decision that the CPS shall have the care for the child, fylkesnemnda shall also decide how extensive the right to contact shall be. Fylkesnemnda can also decide that due to the child's interest there shall not be contact. Fylkesnemnda can also decide that the parents shall not have the right to know where the child is.

Others who have had the daily care for the child in place of the parents can also demand that fylkesnemnda shall consider whether they shall have the right to have contact with the child, and the extent of the contact.

The child's relatives, or others to whom the child is nearly affiliated, can demand that fylkesnemnda considers whether they shall have the right to have contact with the child, and the extent of the contact when

a) one or both parents are dead, or

b) fylkesnemnda has decided that one or both parents shall not have the right to have contact with the child, or that the parent's right to contact shall be very restricted.

The private parties to the case cannot demand that fylkesnemnda treats the case if the case has been treated by fylkesnemnda or the courts during the latest twelve months.

The law itself states that there shall be contact between child and parents even after a placement, but that fylkesnemnda can decide that there shall be no contact. Fylkesnemnda shall also consider how much contact there shall be.

However, the CPS law says nothing about how much contact there shall be - or in what kind of cases there shall be no contact. One has to use the CPS law § 4-1, first subsection, which states that when choosing measures listed in the CPS law chapter 4, the child's best shall be decisive. In legal theory, it is questioned whether contact can be classified as a "measure". The right to contact is a right for the child, but also for the parents. Therefore, Ofstad and Skar writes in their commentary book on the CPS law (5th edition 2009, p. 157) that the child's best cannot be the only end when deciding how much contact there shall be. The parents' right to contact means that it may be correct to decide that there shall be contact in cases where it seems that the contact is not beneficial to the child, but where contact neither seems to be detrimental to the child.

Beyond the reference to the child's best, the law provides no further rules or guidelines when deciding the extent of contact. It is therefore necessary to look at other legal sources. In legal theory, 'legal sources' denotes various factors that say something about the content of a rule. The most important legal source is laws and regulations (rules given by Government and other administrative entities when they have delegated power to do so). However, the law does not say everything that is necessary to apply a rule – and cannot always be enough to do so. Three other legal sources that can be mentioned here, are case law, preparatory works and what in Norwegian legal theory is called "reelle hensyn" (real consideration).

Preparatory works are all public documents that have been created as a part of the process of making a new law or changing a law. The Courts often gives what is said in the preparatory works weight. Giving weight to preparatory works may be justified by seeing the preparatory works as a sign of what the lawmakers' intention with the law is.

"Reelle hensyn" denotes what is considered a just outcome, and what is efficient and have the best consequences.

Another legal source, which is highly relevant in CPS cases, is case law from the European Court of Human Rights (ECHR). In the decision by Supreme Court referred to in Rt. 2000 p. 996, Supreme Court commented on the weight of decisions in ECHR. The author of the decision stated that when Norwegian courts shall apply the European Convention on Human Rights, the courts should apply the same methods as ECHR. The decision referred to the preparatory works to the Norwegian implementation of the European Convention on Human Rights, where it was said, and "the goal is that practice in Norwegian courts equals the practice in international organs as much as possible, as this international practice at any moment evolves."

I then look at what the preparatory works and case law from Supreme Court says about the relation between the supposed durance of a placement and how much contact there shall be. In Ot.prp. no. 44 (1991-92) p. 51 the department responsible for the CPS writes: "The question of the right to contact is connected with questions of how long a decision about placement will last, and what is the purpose of the decision. In practice, these conditions will determine the extent of the right to contact."

In the decision in Rt. 1998 p. 787, Supreme Court expresses the relationship between how long a placement is expected to last and how much contact there should be, this way:

In those cases where the decision that the CPS shall have the care for the child is supposed to be temporary, one should make sure that the contact between child and parents is as good as possible, cf. the statements in NOU 1985: 18 page 162. This demands that contact after some time is frequent and consists of longer time intervals. If one cannot expect that the child can be moved back to the parents, or that it is not expected that the child can be moved to the parents in the near future, the purpose of contact is that the child shall obtain knowledge of their biological origin, with the possibility of a later connection when the child grows up. The main goal must be that even a more restricted extent of contact works to the child's best when taking into consideration the child's emotions, interests and needs."

An understanding of the law as above will not always rule out a more frequent contact even though the placement is supposed to be long lasting. In the case in Rt. 2006 p. 247, Supreme Court referred to the quote above. However, after considering the concrete circumstances, Supreme Court found that a relatively frequent contact between mother and child would be right:

"But even though giving the care back to the mother does not seem a likely solution in near future, a relatively extensive contact between mother and son is appropriate in this case, as both lower court levels – in various degree – has decided. I remind that B is a 13 years old well-functioning boy, and that mother and son all the time has had a close and good relationship. B wishes extensive contact with his mother, towards whom he feels loyalty. Also, the contact has hitherto functioned well."

In the document NOU 2000: 12 p. 211, the Befring committee, which proposed changes in Norwegian CPS policy, wrote on page 211:

"It follows from the preparatory works (Ot.prp. no. 44 (199-1992) p. 51 first column) that "… the question of right to contact is connected with how long the decision that the CPS shall have the care for the child, is going to last, and what is the purpose of the placement."

This is in coherence with what Supreme Court has assumed as the state of the law in a decision from 1998 (RT. 1998 p. 787). In that case, the CPS had been give the care for a 10 years old boy. The question was whether the father should have the right to have contact with his son. In the decision, there are some general statements. When it comes to the child's best, Supreme Court states:

"… the goal of providing the child a stable and good contact with adults and continuity in care when the CPS has taken over the care, can imply that a more restricted degree of contact can be seen as the child's best".

It was also said that:

"In those cases where the decision that the CPS shall have the care for the child is supposed to be temporary, one should make sure that the contact between child and parents is as good as possible; cf. the statements in NOU 1985: 18 page 162. This demands that contact after some time is frequent and consists of longer time intervals. If one cannot expect that the child can be moved back to the parents, or that it is not expected that the child can be moved to the parents in the near future, the purpose of contact is that the child shall obtain knowledge of their biological origin, with the possibility of a later connection when the child grows up. The main goal must be that even a more restricted extent of contact works to the child's best when taking into consideration the child's emotions, interests and needs."

Supreme Court endorsed the Befring Committee's description of the state of law in the case in Rt. 2012 p. 1832. Supreme Court quotes extensively from the Befring committee. Here, it is enough to see that Supreme Court quotes the following as a description of the state of the law:

"The extent of contact hence depends on what kind of placement it is. In temporary placements, there shall be frequent contact in order to make it easier to move the child back to the parents. In more long lasting placements, contact shall be less frequent. In these cases, the purpose of contact is providing the child a cognitive/intellectual understanding of who the biological parents are, not creating or maintaining an emotional affiliation towards the parents."

At this moment, one should pause to think about what the Befring committee describes as the state of the law, and which Supreme Court endorses. Let us try to place ourselves in the situation of a child which fylkesnemnda has decided that the CPS shall have the care for. In our example, we can imagine that the child is ten years old and have lived with its parents for

its whole life. Will it be to the child's best that the amount of contact with the parents shall have the purposes – as the Befring Committee states it – "providing the child a cognitive/intellectual understanding of who the biological parents are, not creating or maintaining an emotional affiliation towards the parents."?

How much contact is to the child's best will off course depend on the relation to the parents. In our example, we can imagine that we are not dealing with a case as those covered by the CPS law § 4-12, first subsection, litra c. This alternative covers cases of maltreatment and abuse. Instead, we can imagine that fylkesnemnda has found, with or without due cause, that the case is covered by the CPS law § 4-19, first subsection, litra a. This alternative covers cases where there are "serious lacks in the daily care, which the child gets in the family home". Furthermore, the child in our example has all the time maintained that he/she wishes to stay with his/her parents. I will guess that most people trying to see themselves in such a situation would not find it to the child's best to have a mere "cognitive/intellectual understanding of who the biological parents are".

So far, I have described what Supreme Court has said about the state of the law, and criticised this view of the state of the law. The next question is whether fylkesnemnda and the courts should follow the view of the state of the law, which Supreme Court expresses in Rt. 2012 p. 1832. When Supreme Court has given its words about the state of the law, the courts – including Supreme Court itself – in most cases follow Supreme Court. Nevertheless, it happens that Supreme Court does not follow its own precedences. In addition, even lower courts should not always follow the precedences from Supreme Court.[2] When it comes to deciding how much contact there shall be between children and parents, there are several reasons that fylkesnemnda and the courts should not consider themselves bound by the statements from Supreme Court, which I have quoted here.

First, we have the laws themselves. The CPS law § 4-1, first subsection, says that in applying the rules in chapter 4 in the CPS law, finding measures that are to the child's best shall be decisive. This rule must be viewed in connection with § 21-2 in tvisteloven, the law regulating procedure in civil cases (that is, all cases for the courts except criminal cases). This rule states that the court shall determine the case about which the decision shall be made, by a free evaluation of evidence.

Applied in tandem, these rules imply that if one finds that a relatively extensive contact is to the child's best in a case where the placement is supposed to be permanent or long lasting, fylkesnemnda shall decide that the contact shall be extensive. This in spite of Supreme Court saying that in such circumstances, the purpose of contact shall be to give the child "a cognitive/intellectual understanding of who the biological parents are".

[2] Former law professor Carl August Fleicher justifies this view in his book *Rettskilder og juridisk metode* (Legal sources and juridical method) from 1988.

In this context, one can also look at the preparatory works to the Child law. In NOU 2008: 9 it is said that the court's decisions about where the child shall live when the parents do not live together, and about contact with the parent with whom the child does not live shall be governed by a leading principle of the child's best. When it comes to the value of court decisions as precedenses in this field, it is said: "A concrete court decision will in general have a limited scope, as the decisions are connected with the circumstances in the concrete cases. This means that one can speak of arguments, which have a certain weight, rather than clear rules.

The statement above is about decisions about where the child shall live when the parents do not live together. It is nevertheless relevant in CPS cases to, as these cases shall build on the concrete circumstances. This is illustrated by the court decision in Rt. 2006 p. 247 mentioned above. In this decision, Supreme Court did not disagree with what had been said about contact in cases where the placement is supposed to be long lasting. Supreme Court did however find that the contact between mother and son should be extensive in this case.

There is also a statement in the preparatory works **Footnote: NOU 2012: 5 p. 41** to the hitherto latest revision of the CPS law that is interesting in this context:

"Since the fundamental principles express different history and fundament, they may in concrete situations be in conflict with each other, and different principles can be used as arguments in favour of different solution. Even though preparatory works, laws, regulations and case law provide guidance and guidelines for how the CPS shall understand and apply the laws and regulations, it is complicated and demanding both understanding and weighting the different principles against each other in concrete cases. One have to consider the total life situation of the child in a concrete way. This process must be founded on professional knowledge and be directed by new scientific research, systematic knowledge and changes in cultural norms. As mentioned above, it is inherent in the nature of principles one has to evaluate them and weight them against each other, as they are not concrete rules that have to be followed or refuted."

In other words: If fylkesnemnda (or the court) after considering the concrete case finds that it is not to the child's best that the purpose of contact is giving the child a "cognitive/intellectual knowledge about who the biological parents are", that shall not be the purpose of contact, either.

Examples from fylkesnemnda

I then look at examples of how fylkesnemnda judges how much contact there shall be in cases where the placement is supposed to be long lasting. I have searched for examples where fylkesnemnda has shared the view of the state of law that the purpose of contact shall be providing the child a "cognitive/intellectual knowledge of who the parents are". The purpose has not been finding out how often fylkesnemnda endorses such a view of the state of the law, but giving examples of members of fylkesnemnda involved who apply such a view of the state of the law. I have found decisions from fylkesnemnda on Lovdata, a website containing various legal information in Norway. In the decisions, I regularly found the name of the leader of fylkesnemnda in each case, but not the name of the other members of fylkesnemnda involved.

Fylkesnemnda is an office that is in charge of making decisions in CPS cases. Both the parents and the municipality (representing the CPS) can appeal a decision in fylkesnemnda to a local court. Each county (fylke) shall have a fylkesnemnd. Several counties can share one fylkesnemnd, and today, there are 12 examples of fylkesnemnda. Each of them is led by a jurist.

One should read the rest of this article with one thing one one's mind. I have only been able to read the decisions from fylkesnemda. I have not read the reports from the psychological experts or the parties to the case. I have hence no reason to say anything about whether the decision to transfer the care for the children to the CPS was right or wrong in these cases.

What I have been looking at is whether fylkesnemnda follows a dubious rule that in long lasting placements; the purpose of contact with the parents shall be providing the child a "cognitive/intellectual knowledge of who the parents are. In some instances, fylkesnemnda has referred to such a rule, but fylkesnemnda has also given more concrete arguments for restricting the right to contact. In these cases, I have found it right to mention that fylkesnemnda also gives a concrete justification for restricting the right to contact. It does not mean that I conclude that fylkesnemnda has come to the right decision. It only means that fylkesnemnda does not build on an automatic use of a rule that the purpose of contact in long lasting placements shall be providing the child a "cognitive/intellectual knowledge of who the parents are.

Examples from fylkesnemnda

I start by looking at case FNV-2013-3-ROG, where Øystein Paulsen acted as leader of fylkesnemnda. In this case, fylkesnemnda quotes some of the statements from Supreme Court about the connection between the supposed length of a placement, and how much contact there should be. Fylkesnemnda quotes the following from Rt. 2012 p. 1832:

“The extent of contact hence depends on what kind of placement it is. In temporary placements there shall be frequent contact in order to make it easier to move the child back to the parents. In more long lasting placements, contact shall be less frequent. In these cases, the purpose of contact is providing the child a cognitive/intellectual understanding of who the biological parents are, not creating or maintaining an emotional affiliation towards the parents.”

This case was about transferring the care for 2 siblings, a 14 years old girl and a 17 years old boy. Concerning the supposed length of the placement and its impact on contact, fylkesnemnda writes:

“Fylkesnemnda then proceeds to consider the concrete circumstances in this case. Fylkesnemnda has found that one faces a long-term placement of Girl. The purpose of contact will for Girl not be keeping the contact with her mother in the best possible way. She shall have knowledge of her biological origin, facilitating later contact when she grows up. Boy faces a more short-term placement, until he is 18 years old. For Boy’s part, the purpose of contact will to a larger degree be keeping the contact with his mother. In fylkesnemnda’s point of view, moving Boy back to his mother is not an option before he is 18 years old.

In regard of the girl’s age – 14 years – this is ludicrous. Fylkesnemnda does however also consider the concrete observations in this case:

“Boy and Girl are 14 and 17 years old. They have not reacted negatively before or after contact with their mother. They also wish more contact with their mother, to whom they have their primary affiliation. Experience also show that when the circumstances favours it, older children are able to find their place in their new base for care when contact with their family is upheld in a good way. It is however important that the children manage to be affiliated to the foster home and the new care persons, and that contact with their parents does not disturb this process. Fylkesnemnda finds it important that there are clear rules for the extent of contact, in order to avoid that the children themselves have to take responsibility for the content and extent of the contact.”

The result in this case was contact with their mother each third weekend with the possibility of staying overnight. That is far more frequent than what Supreme Court has described as ordinary contact practised by the courts. (Note: In Rt. 2012 p. 1832, Supreme Court writes: “Even though one cannot define clear limits for how much contact children in general should have with their parents, looking at court practice may have some interest. Supreme Court has handled several cases concerning the right to contact, and in most cases, the number of annual contact meetings has varied between three and six. This goes for both cases where Supreme Court has decided contact with one parent, as well as cases where Supreme Court has decided contact with both parents.” I thence have no reason to believe that the strange view that the

purpose of contact between a 14 years old girl and her mother shall be that the girl "shall have knowledge of her biological origin", has done any harm in this case. It is anyway remarkable (but I will not say surprising) that fylkesnemnda manages to write such a thing.

In another case where Øystein Paulsen was the leader of fylkesnemnda (FNV-2013-100-ROG), fylkesnemnda gave the care for a 15 years old girl to the CPS. Concerning contact, fylkesnemnda wrote:

"As fylkesnemnda considers the matter, this is a long term placement, until Girl becomes an adult, where the purpose of contact is not keeping up the contact between children and parents in a best possible way. However, Girl will need to have contact with her mother and family to see what happens in their lives. Experience also show that when the circumstances favours it, older children are able to find their place in their new base for care when contact with their family is upheld in a good way."

The decision in the case FNV-2012-172-TRO concerned a placement of four siblings aged 3, 7, 11 and 14 years. Jørn H. Bremnes was fylkesnemnda's chairman. Concerning contact, fylkesnemnda wrote:

"That the purpose of the placement and its length are central factors when deciding contact is clear from legal theory and case law. In a decision referred in Rt. 1998 p. 787, Supreme Court states the following:

"If one cannot expect that the child can be moved back to the parents, or that it is not expected that the child can be moved to the parents in the near future, the purpose of contact is that the child shall obtain knowledge of their biological origin, with the possibility of a later connection when the child grows up. The main goal must be that even a more restricted extent of contact works to the child's best when taking into consideration the child's emotions, interests and needs."

Therefore, contact shall not be decided with the purpose to uphold the boys' affiliation towards the parents. Fylkesnemnda shall decide the extent of contact with the purpose that each child shall have knowledge of its parents, facilitating a possible future contact."

In this case, fylkesnemnda decided that there should be contact six times a year. Fylkesnemnda mentioned that two of the children had shown reactions after contact, and that the parents had repeatedly been violent towards the children. Anyway, the quote above that fylkesnemnda applies the rule that contact in long-term placements shall not have the purpose to uphold the child's affiliation towards the parents.

In the case in FNV-2012-204-TRO, fylkesnemnda gave the care for four siblings, born 2001, 2004, 2007 and 2008 to the CPS. Fylkesnemnda's chairperson was Inger Lise Rekve. Under, I quote the entire discussion of contact between children and parents, in order to demonstrate how much weight fylkesnemda placed on this factor:

"Children and parents have got the right to contact with each other, even if they do not live together, cf. law of the CPS § 4-19. This rule must be viewed in context with the European Human Rights Convention (EHRC) article 8, which among other things protect the right to family life.

When deciding the extent of the contact, the consideration will depend on the child's age and development, including the child's mental strength and need for stability. Furthermore, factors concerning the takeover of care, and the perspectives for this are important, cf. Ot.prp. no. 44 (1991-1992) p. 51 first column, where it is stated that the question of the right to contact is related to the question of how long the decision will be standing, and what is the purpose of the decision. Fylkesnemnda only decides a minimum contact, and the parties to the case may make agreements to more contact, if this is to the child's best.

Fylkesnemnda considers that the placement will likely be long lasting. Therefore, contact shall serve the goal of maintaining knowledge of the biological family. Fylkesnemnda therefore finds that contact consisting of six hours four times a year is adequate. If the contact turns out to be positive experience for the children, the CPS should consider whether it would be to the children's best that contact is extended.

The CPS is in charge of determining time and place for contact after hearing the parties' opinions."

In the case in FNV-2013-109-AGD, where Arne Kjønstad was the chairperson in fylkesnemnda, fylkesnemnda gave the care for a three years old boy to the CPS. Here is the entire part of the decision that concerned contact, as it illustrates how the general views on contact that one finds in the preparatory works (NOU 2000. 12) influences the decision about contact:

"It follows from the CPS law § 4-19 that children and parents have got the right to contact if nothing else has been decided. The law is founded on the idea that contact is important for both children and biological parents.

The principle is also present in ECHR article 8, about the right to respect for private and family life, and in the UN's child convention art. 9 no. 3.

When deciding how much contact there shall be, it is essential whether the child can be moved back to the parents within reasonable time, cf. Rt. 1998 p. 787. In NOU 2000: 12 p. 156 it is stated: "The extent of contact hence depends on what kind of placement it is. In temporary placements, there shall be frequent contact in order to make it easier to move the child back to the parents. In more long lasting placements, contact shall be less frequent. In these cases, the purpose of contact is providing the child a cognitive/intellectual understanding of who the biological parents are, not creating or maintaining an emotional affiliation towards the parents."

Rt-2012-1832 was about deciding contact for a six years old girl. Fylkesnemnda quotes the following considerations from the decision:

"It follows that contact with the parents must be practiced in a way that does not hinder establishing a secure and good relation to the foster parents. Contact must also further the goal of creating and maintaining the child's knowledge of, and understanding of, its biological origin. … "Even though one cannot define clear limits for how much contact children in general should have with their parents, looking at court practice may have some interest. Supreme Court has handled several cases concerning the right to contact, and in most cases, the number of annual contact meetings has varied between three and six. This goes for both cases where Supreme Court has decided contact with one parent, as well as cases where Supreme Court has decided contact with both parents."

When considering the extent of contact, fylkesnemnda bases the decision on the current situation, that the mother alone shall have contact with the child, the child's age, reactions towards contact, the child's affiliation towards the mother, the child's need to settle emotionally in its new home, and the child's personality. Fylkesnemnda finds that this is a long-term placement. Given the mother's problems, it is difficult to see that the mother within 2-3 years will be able to provide adequate care for the child. After considering all aspects of this case, fylkesnemnda finds that the right contact frequency is contact for two hours five times a year."

In the case in FNV-2011-488-HSF – where Ivar Eilertsen was fylkesnemnda's chairperson, the care for two children was given to the CPS. About the children's age, it is said that they were born in 2002/2006, and the decision was made by fylkesnemnda on February 15 2012.

In this case, fylkesnemnda does not refer to the statements from Supreme Court concerning the purpose of contact when a placement in a foster home is supposed to be long lasting.

Instead, fylkesnemnda says, in that part of the decision, which is about contact that the children shall have new psychological parents. “Psychological parents” is a concept used by among others Supreme Court in some decision where the child has been living most of its life in a foster home and experiences the foster parents as its parents, for example in the case in Rt. 1986 p. 1189, where the CPS had taken the child from the parents after birth.

I quote the entire part of the decision, which concerns contact, in this case where a ten years old child is supposed to get new psychological parents:

“When fylkesnemnda decides that the CPS shall have the care for the child, fylkesnemnda shall also decide how much contact there shall be, cf. the CPS law § 4-19, second subsection. Fylkesnemnda shall decide a minimum contact. The parties to the case might later make agreements about a more extensive contact, if the circumstances imply that more contact is the best solution. When applying this rule, finding measures that is to the child’s best shall be decisive. Hereunder, weight shall be given to the goal of providing the child a stable and good contact with adults, and continuity in the care. See § 4-1.

As fylkesnemnda views the matter, the foster home placement will be long lasting. Both parents have weak cognitive abilities. The father has mental problems, and the mother is passive and without self-knowledge. The children are about to become more mature than their parents.

The children shall settle emotionally in the foster home and get new psychological parents. This implies that the amount of contact with the parents shall be restricted.

The CPS’s suggestion of contact seems to concur with current court practise. Fylkesnemnda therefore endorses the CPS’s suggestion.

The decision is without dissent.”

In the case in FNV-2011-230-AGD/FNV-2011-231-AGD/FNV-2011-269-AGD, where Bodil Folkestad Gyland was fylkesnemnda’s chairperson, fylkesnemnda gave the care for “Boy 2” to the CPS. “Boy 2” is born in 2005, and the decision was made on January 05, 2012. Fylkesnemnda decided that there should be contact between Boy 2 and the mother six times a year, each consisting of four hours, and there should be contact with the boy’s father twice a year, four hours each time.

Here is what fylkesnemnda writes about contact between Boy 2 and his mother:

“A central factor when considering how much contact there shall be, is whether one can expect to move the child back to the parents within reasonable time, cf. Rt 1998 p. 787. In NOU 2000: 12 it is stated that: “The extent of contact hence depends on what kind of placement it is. In temporary placements, there shall be frequent contact in order to make it easier to move the child back to the parents. In more long lasting placements, contact shall be less frequent. In these cases, the purpose of contact is providing the child a cognitive/intellectual understanding of who the biological parents are, not creating or maintaining an emotional affiliation towards the parents.”

Fylkesnemnda finds that it is likely that the placements are long-term placements. Mother’s problems seem to be fundamental and to be time demanding if they are to be altered. Fylkesnemnda refers to what is said about this topic above.

Fylkesnemnda finds that there shall be contact between Mother and Boy 2 six times a year, four hours each time. Contact six times a year will, in fylkesnemnda’s view, be a reasonable level in order to maintain Boy 2’s knowledge of Mother, while contributing to providing him a god and safe connection to the foster home. In the time to come, it is important to focus on correcting the emotional skew development Boy 2 suffers from. Even though he already knows the foster home, he shall spend energy on settling there emotionally and adopt this home as his permanent home. He must be given sufficiently time and quiet to do so. Boy 2 will probably have his mother in mind and worry about her. Contact six times a year will give Boy 2 a chance to regularly check how she is doing.”

In the case in FNV-2013-OPP, where Sjur Skjævesland was fylkesnemnda’s chairman, fylkesnemnda gave the CPS the care for a 15 years old girl. In the decision we do not find the by now well-known quotes from fylkesnemnda and Supreme Court. There are, however, some statements on the implications of the fact that fylkesnemnda assumes that the placement will be long lasting, that one should consider. Considering contact with the mother, fylkesnmenda writes:

“Fylkesnemnda finds that the placement will be lasting, as it is unlikely that the parents will be fit for having adequate car for Girl.

This circumstance implies that the extent of contact should be restricted.

The CPS has suggested that there shall be contact between Girl and her mother once a month, two hours each time. Girl has herself when asked by fylkesnemnda said that she wants to see her mother, but not too often.

After considering the case in its entirety, fylkesnemnda finds that the CPS's suggestion maintains Girl's needs and wishes in an adequate way. The extent of contact will hence be as in the CPS's suggestion."

At this moment, I find it necessary to mention that this was a case where both the parents and the girl agreed that the CPS should have the care for the girl. The girl had been sexually abused, and she feared honour related punishment if she moved back to her family. Fylkesnemnda decided to allow the CPS to decide that the parents should not have the right to know her address (cf. the CPS law § 4-19, second subsection).

Whatever might be right when it comes to contact in this case (and the contact decided by fylkesnemnda is frequent compared to most cases), the following statement from fylkesnemnda is meaningless when it comes to a 15 years old girl whom one should not suppose is going to have new "psychological parents",

"Fylkesnemnda finds that the placement will be lasting, as it is unlikely that the parents will be fit for having adequate car for Girl.

This circumstance implies that the extent of contact should be restricted."

I choose contrasting this with a quote from another fylkesnemnda case (FNV-2013-43-MRO). The choice of bold characters is mine,

"Fylkesnemnda finds that this is a foster home placement which will last until the girl is 18 years old, with the option of prolonging it until she is 23 if she agrees. It is very important that the girl gets quiet and the opportunity to experience stability in the foster home, if they be supposed to help her in approaching adulthood. The main rule is then a restricted extent of contact. **The girl is however soon 16 years old, and she shall not have new psychological parents.** It is important to maintain her relations with the parents by means of a relatively frequent contact. The girl herself has stated her wish to meet her mother every weekend. She also wishes to meet her father, but less often than she meets her mother.

In the case in FNV- 2012-13-OPP, where Randi Egge was fylkesnemnda's chairperson, fylkesnemnda gave the CPS the care for an 11 years old boy to the CPS. Here is some of the things fylkesnemnda writes on the subject of contact:

"Supreme Court has stated that if one cannot expect moving the child back to the parents within reasonable time, the purpose of contact is that the child shall get knowledge of its biological origin with the possibility of future affiliation when the child grows up (Rt. 2006 p. 247). The preparatory works state that the purpose of contact in long term placements is providing a cognitive/intellectual knowledge of who the biological parents are, not creating or maintaining an emotional affiliation towards the parents (NOU 2000: 12).

Boy has lived with his mother until the age of five. Since then, he has lived with his father. Fylkesnemnda finds that he has affiliation towards both parents. The purpose of contact between Boy and his parents will be having some contact in order to maintain Boy's knowledge of his biological parents. Furthermore, contact with his parents will represent a continuity in Boy's life."

Another case where fylkesnemnda stated that the purpose of contact was that the seven years old boy should have "knowledge" of his grandmother, was the case in FNV-2012-271-TRO, where Jørn H. Bremnes was fylkesnemnda's chairperson. After quoting Rt. 1998 p. 787 and Rt. 2012 p. 1832, fylkesnemnda writes:

"When considering Son's special needs, the lacks in the care in Grandmother's home, and Grandmother's lack of understanding and realising the problems, fylkesnemnda finds it probable that the placement will be long lasting, most probably for the entire childhood. *The purpose of contact is then that Son shall have knowledge of his biological Grandmother, facilitating possible later affiliation.* In practice, the extent of contact also varies in long term placements, to a great extent because one shall give weight to factors as the child's ages and possible established affiliation towards the care person."

The examples above show that several chairmen of fylkesnemda actively uses the statements from Supreme court and the Befring committee, that the purpose of contact in long term placement shall be providing the child "knowledge" of the parents or a "cognitive/intellectual understanding of who the biological parents are". In some of these examples, fylkesnemnda decided more contact than what according to Supreme Court in Rt. 2012 p. 1832 is usual in court practise. Anyway, these cases too show that fylkesnemnda uncritically build on an understanding of the law that should never have been stated by Supreme Court.