> in this 'battle of semantics' have done little to advance the cause of effective insurance coverage and have merely encouraged the insurance companies to continue their duel of legal specificity."

1 Allan D. Windt, Insurance Claims & Disputes § 7.01 at 526-27 (3d ed. 1995). Thus, sound policy reasons support the long-standing approach of the Nebraska Supreme Court in applying the doctrine of mutual repugnancy.

CONCLUSION

Because the Farmers Mutual policy and the Federated policy contain mutually repugnant language and Nebraska law requires that the vehicle's insurer, which is Federated, assume primary liability in this situation, we reverse the district court's entry of summary judgment in favor of Federated and remand the cause with direction to enter summary judgment in favor of Farmers Mutual.

REVERSED AND REMANDED WITH DIRECTION.

INBODY, Chief Judge, participating on briefs.

IN RE INTEREST OF EMMA J., A CHILD UNDER 18 YEARS OF AGE. STATE OF NEBRASKA, APPELLEE, V. GENEO J., APPELLANT.

789 N.W.2d 528

Filed August 10, 2010. No. A-09-1031.

SUPPLEMENTAL OPINION

Appeal from the Separate Juvenile Court of Lancaster County: REGGIE L. RYDER, Judge. Supplemental opinion: Former opinion modified. Motion for rehearing overruled.

Laura A. Lowe, P.C., for appellant.

Gary Lacey, Lancaster County Attorney, Barbara J. Armstead, Alicia B. Henderson, and Christopher Reid, Senior Certified Law Student, for appellee.

INBODY, Chief Judge, and SIEVERS and CASSEL, Judges.

PER CURIAM.

Case No. A-09-1031 is before this court on the motion for rehearing filed by the State of Nebraska, appellee, regarding our opinion reported at *In re Interest of Emma J., ante* p. 389, 782 N.W.2d 330 (2010). We overrule the motion, but for purposes of clarification, we modify the opinion as follows:

That portion of the opinion designated "*Active Efforts and Expert Testimony*" in the analysis section and the portion designated "CONCLUSION," *id.* at 400-02, 782 N.W.2d at 338-39, are withdrawn, and the following language is substituted in their place:

> *Active Efforts and Expert Testimony.*
>
> Geneo next argues that the juvenile court erred in finding that the State made active efforts to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family and that those efforts were unsuccessful, and in removing Emma from the family home and placing her in foster care without expert testimony as required under ICWA.
>
> The specific finding which Geneo contends was error is included in the September 30, 2009, adjudication order, wherein the juvenile court specifically found that active efforts had been made. However, there was no evidence adduced at the adjudication hearing regarding either active efforts or expert testimony. Thus, the juvenile court erred in making specific findings of fact in the September 30 order regarding issues not addressed at the adjudication hearing. However, upon our de novo review of the record, we find that said error was harmless and not prejudicial to Geneo, because the issue had previously been fully addressed in a hearing evidenced by a June 11 order found in the supplemental transcript.
>
> The supplemental transcript in this case, filed by the State, includes the June 11, 2009, order regarding a motion for temporary custody which indicates that after a hearing was held on the matter, the juvenile court found that active efforts had been made, including "a

pretreatment assessment, visitation for [Venessa], counseling services, and a comprehensive family assessment." The June 11 order further indicates that the juvenile court determined that Emma's therapist "is a professional person having substantial education and experience in the area of her specialty."

Therefore, the portion of the September 30, 2009, adjudication order regarding active efforts as to Emma's continued out-of-home placement was merely a continuation of the previously entered June 11 order and is not a final, appealable order as to the issue of Emma's continued out-of-home placement in the September 30 order. See *In re Interest of Enrique P. et al.*, 14 Neb. App. 453, 709 N.W.2d 676 (2006) (adjudication and disposition orders are final, appealable orders), and *In re Interest of Tayla R.*, 17 Neb. App. 595, 767 N.W.2d 127 (2009) (dispositional order which simply continues previous determination is not appealable order). In order to properly raise the out-of-home placement issue before this court, Geneo should have filed an appeal within 30 days of the June 11 order pursuant to Neb. Rev. Stat. § 25-1912 (Reissue 2008), and without such an appeal, Geneo cannot now claim that the juvenile court erred in its previous determination. See, also, *In re Interest of Andrew H. et al.*, 5 Neb. App. 716, 564 N.W.2d 611 (1997) (if order is not new, but merely continuation of previous order, it does not extend time for appeal).

CONCLUSION

In sum, we find that the proper burden of proof for the adjudication of an Indian child is by a preponderance of the evidence. In this case, the State proved by a preponderance of the evidence that Emma was a child within the meaning of § 43-247(3)(a). We further find that even though the juvenile court erred in making specific findings of fact regarding active efforts in the September 30, 2009, adjudication order, the error was harmless because the findings were merely a continuation from a previously entered order regarding out-of-home placement

and, therefore, were not reviewable in the instant appeal. Thus, we affirm the juvenile court's order of adjudication in its entirety.

AFFIRMED.

The remainder of the opinion shall remain unmodified.

FORMER OPINION MODIFIED.

MOTION FOR REHEARING OVERRULED.