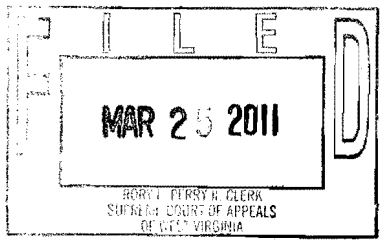
IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

IN RE:

KRISTIN RENAE Y.,
ARHTER EUGENE Y.,
SCHARLOTTE LORRAINE Y.,
WILLIAM EDDY Y.

No. 11-0300



COUNSEL FOR INFANT CHILDREN'S RESPONSE TO PETITION FOR APPEAL FILED BY THE DEPARTMENT OF HEALTH AND HUMAN RESOURCES

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COUNSEL FOR INFANT CHILDREN'S RESPONSE IN SUPPORT OF PETITION FOR APPEAL FILED BY DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Counsel for the infant children joins in the Petition filed by the Department of Health and Human Resources ("DHHR") regarding the disposition afforded the Respondent Mother by the Circuit Court. Counsel respectfully disagrees with the decision of the Circuit Judge in granting the Respondent Mother an alternate disposition. The evidence at the disposition hearing was such that termination of the Respondent Mother's parental rights was necessary to establish permanency for the infant children.

Facts

The DHHR Petition set forth a detailed and thorough description of the procedural history of the underlying abuse and neglect proceeding. The children in this case appear to have suffered some of the most serious abuse ever imposed upon a child and the effects of those early years in their lives has left an almost incurable scar on each of them. Counsel for the infant children hereby incorporates the facts set forth in the DHHR Petition and provides the following additional facts which bear upon the issues in this appeal:

At the time of their removal from the respondents' custody, the infant children were residing with the Respondent Father. The Respondent Mother placed the children in his care, despite obtaining a restraining order which specifically precluded contact between the infant children and the Respondent Father. The restraining order was obtained on the factual proffer of the Respondent Mother that the Respondent Father had sexually abused the infant child, Kristin Renae Y.

At the time of their removal, the infant children thanked the DHHR workers for removing them from their father's home. Following their removal, the infant children reported severe physical abuse, witnessing sexual acts between their parents and others, sexual abuse by their father and women he had relationships with, and overall deplorable living conditions.

Throughout the course of their placement in the custody of the DHHR, the infant children have had several placements in various foster homes, hospitalizations and shelters due to their serious behavior problems, acting out sexually on each other, and inability to settle. For example, at the time of the disposition hearing in the fall of 2009, the infant child, Kristin Renae Y had been hospitalized for almost a year with little improvement. At that time, her counselor reported her mental health was tenuous and there was no indication of when she would be stable enough to be placed outside of an institutional setting. The infant child, Arther Eugene Y. was separated from his siblings because of alleged sexual behavior towards his brother. The infant child, William Eddy Y ("Eddy") had been placed outside of the foster home on two occasions for inability to control his anger and behaviors.

The testimony of the counselors who treated the infant children provided a chilling picture of the abuse these children suffered and the difficult road they faced in their recovery. All of the counselors consistently testified that contact with the parents was detrimental to their present well being. Tammy Hamner, licensed psychologist, testified that, in her opinion, the children continued to exhibit behavioral problems because they could not settle until they knew whether or not they would be returned to their parents. Both Beth Albert, a therapist at Fox Run Hospital who treated Kristin, and

Sharon McMillen, a licensed clinical psychologist who treated Arther, Eddy and Scharlotte, opined that the children suffered from, among other disorders, post-traumatic stress disorder.

What was evident from their testimony was that, even though their mother was not the primary perpetrator of the abuse, contact with her and trust issues the children had with her, was equally detrimental to the children. In fact, Ms. McMillen testified that she believed the children were not in a place to reunify with either parent in the fall of 2009. She further testified that she could not give an opinion whether she would ever give an opinion to reunify the children with either one of their parents in the future.

Despite the unimaginable things that happened to the infant children, the parties initially believed and wanted the Respondent Mother to rehabilitate herself and to reunite the children with her because the Respondent Mother appeared willing to accept responsibility for her actions and to obtain the necessary treatment she needed for herself. The evidence throughout the underlying proceeding revealed that the Respondent Mother had her own psychological problems, poor judgment, and unemployment issues. At the beginning of the case, the Respondent Mother was hospitalized for overdose of prescription medication.

Following her stipulated adjudication, it was agreed that the Respondent Mother would be granted a six month post-adjudicatory improvement period. At the outset, the Respondent Mother appeared to want to improve, appeared to accept responsibility, and admitted she needed help, including therapy. However, things changed in the spring of 2009. Despite her proffers that she was attending therapy, the DHHR learned that the Respondent Mother was in fact not attending therapy and had not been attending for

several months.

The testimony at the dispositional hearings revealed that the Respondent Mother failed to attend therapy for six months. The reasons for not attending therapy included conflicts with employment, but it was revealed she did not work for over a month during that time. The Respondent Mother's noncompliance with the treatment program was so severe that the facility required that she meet certain requirements for a period of one month before she could resume therapy. The Respondent Mother was advised of this in July 2009, after the DHHR had moved to terminate her improvement period, and she was still non-compliant a month later. Moreover, the only reason she was able to resume therapy on August 20, 2009 was because her attorney requested her counselor allow her to return without complying with the terms set by the facility.

The Respondent Mother's counselor testified at the dispositional hearing that she would need six months to address her own trauma and an additional three to four months to address the issues presented in the court papers. Her counselor further testified that he believed she would need a minimum of three to four months of individual therapy before she could begin family therapy, a requirement all counselors deemed necessary before reunification could occur.

In addition to individual therapy, the Respondent Mother was required to take parenting training. At the time of the disposition hearing, the Respondent Mother had receive 16 months of parenting and life skills training, but had not completed the program. The outreach coordinator providing the parenting and adult skills training testified that, due to her up and down demeanor and the erratic behavior exhibited in supervised visits, he did not believe unsupervised visits with the infant children were

appropriate. The outreach coordinator also did not believe the Respondent Mother could complete the parenting program.

The life skills training offered to the Respondent Mother addressed money management and planning. The testimony at the disposition hearing revealed that the Respondent Mother had obtained rental assistance from Valley Healthcare in April and May 2009, but had failed to share this information with her outreach coordinator or the DHHR. The Respondent Mother also asked for assistance in July 2009, but withdrew her request because she reported receiving assistance from an undisclosed source.

Argument

While counsel acknowledges that the Respondent Mother made improvements throughout the course of her improvement periods, the overwhelming evidence at the disposition hearings revealed that her improvements were inconsistent, she continued to lack judgment regarding her own care and life decisions, and could not create the stable living environment needed of the infant children. Moreover, the evidence revealed that the abuse suffered by the infant children was so great that their counselors believed contact with the Respondent Mother created more trauma to the children. Thus, counsel respectfully disagrees with the decision of the Circuit Court.

1. The Circuit Court Abused Its Discretion In Not Terminating The Respondent Mother's Parental Rights.

The evidence at the disposition hearing revealed that the Respondent Mother was nowhere near in a position to reunify with the infant children. Her own counselor believed that the she needed a minimum of 9 months of additional therapy before she would be in a position to attempt family therapy, a necessary prerequisite for any attempt at reunification. This opinion came at a time when the Respondent Mother had already

been given 18 months of improvement periods.

The DHHR Petition correctly sets forth the law on the circumstances the Circuit Court must find at disposition. The key question in this case is whether the conditions of abuse and neglect could be corrected in the near future. The answer to that question is NO. The Circuit Court correctly found that the Respondent Mother had not corrected the conditions that led to the removal of the infant children. This was in part due to the abused suffered by the children and, in large part, to the fact that the Respondent Mother failed for a period of 6 months to attend necessary therapy without justification. The Respondent Mother by her own choice failed to attend necessary and critical therapy for a period of 6 months. She only resumed therapy at a time when she believed she was in jeopardy of having her improvement period revoked and only because her attorney requested the counselor agree to see her.

Moreover, the Respondent Mother had received 16 months of parenting training at the time of the dispositional hearing. The outreach coordinator providing the training did not believe she could complete the program nor did he believe she should receive unsupervised visitation. The Respondent Mother further continued to rely on emergency assistance for housing from Valley Healthcare despite claiming to be employed. All of these factors reveal that she was nowhere near ready for reunification.

2. The Decision Of The Circuit Court Denies The Infant Children Permanency.

The Circuit Court appears to have based its decision in large part on the relationship the infant children had with the Respondent Mother. However, the Circuit Court's decision to place such a heavy weight on this factor is misplaced because it denies the children the permanency they deserve. The DHHR Petition correctly states

that the best interests of the children are the paramount consideration. An important consideration in this regard is the establishment of permanency for the infant child. By providing the Respondent Mother with an alternate disposition 5, the Circuit Court has denied the children the opportunity to achieve permanency.

Three of the infant children are in foster home placements. The plan is to place the fourth child in a foster home placement when appropriate. Do to the status of this case, none of the children can be adopted and it is very difficult to place them in a home where that option is not available. Ms. McMillen testified that at least one of the infant children, Arther Eugene Y. had expressed a desire to be adopted by his foster parents.

Moreover, the remote possibility of whether the Respondent Mother could improve enough to reunify with the children and the uncertainty of whether the children themselves would heal enough dictates that termination was the only course of action to be taken in this case. As noted by the DHHR, the counselors treating the children were clear that due to the amount of trauma they endured contact with the Respondent Mother continued to traumatize the children.

Ms. McMillen testified that she believed reunification was not in the children's best interest at the time of the disposition hearing and that she was not sure whether she could ever give that opinion.

Conclusion

For the foregoing reasons, counsel for the infant children respectfully requests this Honorable Court grant the relief requested of the DHHR in its' Petition for Appeal, and for such other relief as to this Honorable Court seems appropriate.

Respectfully submitted this 23rd day of March, 2011.

Kristin Y., Arther Y., William Y., Scharlotte Y.,
By Counsel,

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CERTIFICATE OF SERVICE

I, Rebecca Donnellan-Pomeroy, do hereby certify that on March 23, 2011, copies of the above **"Counsel for Infant Children's Response in Support of Petition for Appeal Filed By The Department of Health And Human Resources"**, was delivered by depositing a true copy thereof in the United States mail, postage prepaid, to the following:

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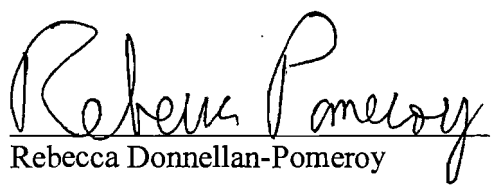

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