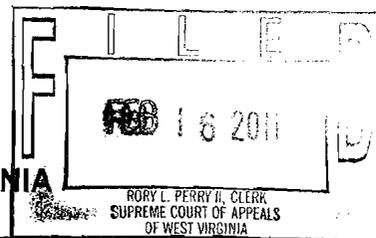


Docket No.

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



**IN RE: KRISTIN RENAE Y.,
 ARTHUR EUGENE Y.,
 SCHARLOTTE LORRAINE Y., and
 WILLIAM EDDY Y.**

From Harrison County Abuse and Neglect Case Nos: 08-JA-21, 22, 23, and 24-3
The Honorable James A. Matish

**PETITION FOR APPEAL BY THE DEPARTMENT OF HEALTH AND HUMAN
RESOURCES**

**DARRELL V. McGRAW, JR.
ATTORNEY GENERAL**

Katherine M. Bond
Assistant Attorney General
W.Va. State Bar #10000
Counsel for DHHR/BCF
9083 Middletown Mall
White Hall, WV 26554
(304) 368-4420 x79332
Fax (304) 368-4191
Katherine.M.Bond@wv.gov

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I. KIND OF PROCEEDING AND NATURE OF THE RULING IN THE LOWER TRIBUNAL

The West Virginia Department of Health and Human Resources (“the Department”) appeals the Harrison County Circuit Court’s Disposition Order entered in the abuse and neglect case on November 16, 2010, to the extent that the Circuit Court did not terminate the Respondent Mother’s parental rights to Kristin, Arther, Scharlotte, and William Eddy (“Eddy”).

On October 8, 2009, the Harrison County Circuit Court commenced four (4) days of evidentiary hearings to determine the disposition in an abuse and neglect case. On the last day of evidentiary hearings, November 2, 2009, the Department asked the Circuit Court to terminate the parental rights of both the Respondent Father and the Respondent Mother. At a hearing on January 6, 2010, the Circuit Court announced its ruling. The Circuit Court terminated the parental rights of the Respondent Father but granted the Respondent Mother an alternate disposition five pursuant to W.Va. Code § 49-6-5(a)(5). Under W.Va. Code § 49-6-5(a)(5), the children remain in the Department’s legal custody, but the Respondent Mother’s parental rights are not terminated. Consequently, the children are not eligible for adoption. By order entered on November 16, 2010, the Circuit Court set forth its Findings of Fact and Conclusions of Law supporting its decision.

The Department appeals the Harrison County Circuit Court’s November 16, 2010 Order to the extent that the Circuit Court did not terminate the Respondent Mother’s parental rights.¹ The Department asserts that the Circuit Court erred in determining that

¹ The Department agrees with the Circuit Court’s decision to terminate the Respondent Father’s parental rights. Therefore, the facts and discussion in its petition for appeal will focus solely on the Respondent Mother.

the Respondent Mother's rights should not be terminated because there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and failure to terminate the Respondent Mother's parental rights is not in the children's best interest.

II. STATEMENT OF FACTS

In October of 2007, the Department received a referral alleging that Kristin (currently 12 years old), Arther (currently 10 years old), and twins Scharlotte and Eddy (currently 8 years old) were being maltreated by their parents. The Department investigated and instituted a safety plan with the Respondent Mother in which the Respondent Mother agreed that she would not allow the Respondent Father to have contact with the children as stated in a protective order from the state of Ohio. On November 5, 2007, the Department implemented safety services in the Respondent Mother's home but did not seek Circuit Court involvement at that time.

On April 7, 2008, the Department sought and was granted emergency custody of Kristin, Arther, Scharlotte, and Eddy. Emergency custody was based on the Respondent Mother's hospitalization for overdosing on prescription drugs and permitting the Respondent Father to have contact with the children, including signing custody of the children over to him. See Application for Ratification of Emergency Custody and Order with Respect to Application for Ratifying Emergency Custody entered April 7, 2008. On April 9, 2008, the Department filed an abuse and neglect petition alleging physical abuse by both parents, drug use by the Respondent Father, domestic violence, sexual abuse by the Respondent Father, and failure of both parents to provide a clean and stable home for the children. See Petition filed April 9, 2008. An Amendment to

Petition was filed on April 18, 2008, to include sexual abuse allegations based on disclosures by the children to their foster mother and allegations of educational neglect. See Amendment to Petition filed April 18, 2008. The Petition was amended again on May 22, 2008, to include allegations that the children had inappropriate sexual knowledge and to add the Respondent Father's paramour as a respondent in the case. See Amendment to Petition filed May 22, 2008.

A preliminary hearing was held on April 18, 2008, at which time both parents waived their right to the preliminary hearing. An adjudicatory hearing began on May 8, 2008, but was continued to allow the Department to amend the petition and to permit the children to complete psychological evaluations with a psychologist. The adjudicatory hearing resumed on June 18, 2008, at which time both parents entered stipulated adjudications. See Adjudicatory Hearing Order entered July 2, 2008.

The Respondent Mother stipulated that she had neglected her children by allowing them to obtain inappropriate sexual knowledge by exposing them to sex. The Respondent Mother further stipulated to exposing her children to domestic violence and to the educational neglect of Eddy and Scharlotte for failure to enroll them in school at the appropriate age. The Respondent Mother admitted that the following issues needed to be resolved: poor parenting skills and decisions, exposure of the children to sex, exposure of the children to domestic violence, and educational neglect. In order to remedy the issues, the Respondent Mother agreed to participate in individual therapy, participate in parenting classes, follow the recommendations of any therapist, sign releases for the Department, maintain a clean and stable residence, cooperate fully with all service provides, and have no contact with any known drug abusers or felons. See

Stipulated Adjudication of the Respondent Mother, Anna [Y.], entered June 18, 2008. Based on the Respondent Mother's stipulations, the Circuit Court adjudicated her as a neglectful parent and found Kristin, Arther, Scharlotte, and Eddy to be neglected children.

On July 9, 2008, the Circuit Court granted the Respondent Mother a six-month post-adjudicatory improvement period to be governed by the terms of her Family Case Plan. The terms of the Respondent Mother's Family Case Plan included, but were not limited to: cooperating with the Department, keeping all scheduled appointments with any program recommended by the Department or the multidisciplinary treatment team ("MDT"), rescheduling any missed appointments and informing the Department of the rescheduled appointments, complying with announced and unannounced home visits, signing all releases for services and treatment, notifying the Department within twenty-four hours of any address change, making contact with the Department at least once a week, fully cooperating with service providers, submitting to random blood and urine testing, fully participating in therapy and/or counseling to address the neglect inflicted on her children, and participating in family therapy if requested by the children's therapists. See Family Case Plan for Anna [Y.], filed July 9, 2008. At the hearing on July 9, 2008, the Respondent Mother indicated that she understood the terms of her case plan and what was required of her during her improvement period. She further indicated that she understood that if she did not comply with her case plan, that her parental rights could be terminated. Transcript of July 9, 2008 hearing, 5:19 – 8:8.

At the beginning of her post-adjudicatory improvement period, the Respondent Mother was complying with the terms of her case plan and making progress toward

reunification with her children. Therefore, on December 17, 2008, the Department agreed to a three month extension of the Respondent Mother's improvement period. See Order Granting Extension to Post-Adjudicatory Improvement Periods of Respondents entered January 7, 2009. On April 9, 2009, the Circuit Court held an end of improvement period hearing to discuss the progress made by the parents. The Respondent Mother moved for a six month dispositional improvement period. At that time the Department believed that the Respondent Mother was still substantially complying with the terms of her case plan, but that she needed additional time to complete her services; therefore, the Department did not object to the dispositional improvement period. See Order Granting Dispositional Improvement Period to Respondents entered May 5, 2009. The Respondent Mother further agreed to an addendum to her existing family case plan in which she admitted to physically abusing her children and agreed to address that issue during her dispositional improvement period. See Addendum to Existing Family Case Plan filed April 9, 2009.

At a status hearing on July 6, 2009, the Department indicated that it would be filing an amended petition to allege sexual abuse by the Respondent Father.² The Department further stated that it would be filing motions to revoke both parents' improvement periods for noncompliance. The Department proffered to the Court that the Respondent Mother had not been attending therapy. On July 23, 2009, the Department filed a motion to revoke the Respondent Mother's improvement period on the basis that she was not complying with her case plan because she had not attended

² The Department filed its Second Amendment to Petition on July 22, 2009. Although during the dispositional hearings evidence was presented regarding the children's allegations that they were sexually abused by their father, the Circuit Court never specifically ruled on the allegations in the Second Amendment to the Petition. Rather, the Circuit Court terminated the Respondent Father's parental rights based on his stipulations and his noncompliance with the case plan.

therapy since March 2009, she was not keeping in contact with the Department, she was not fully complying with drug tests, and she did not inform the Department that she was not attending therapy. See Motion to Revoke Dispositional Improvement Period of Respondent – Anna [Y.] filed July 23, 2009.

On July 29, 2009, the Circuit Court held an evidentiary hearing on the Department's motion to revoke the Respondent Mother's improvement period. The hearing on the motion to revoke continued on August 7, 2009. At the end of the August 7, 2009 hearing the Circuit Court indicated that it would hold the hearing over until the end of the dispositional improvement period thereby making the Department's motion to revoke the improvement periods moot. The Circuit Court held evidentiary hearings on disposition on October 8, 2009, October 20, 2009, October 28, 2009, and November 2, 2009. The Circuit Court also took judicial notice of the testimony presented in all prior hearings.

Based on the evidence presented over six days of evidentiary hearings, on November 16, 2010, the Circuit Court entered an order in which it found that the Respondent Mother's parental rights should not be terminated, but that she should have no contact with the children unless requested by the children. In regards to the children, the Circuit Court found that family therapy would be necessary before reunification could occur (Disposition Order, Findings of Fact ¶ 17), that the children would continue to have behavioral problems because they could not settle until they knew whether they would be returned to their parents (Disposition Order, Findings of Fact ¶ 18), that visitation with their parents re-traumatized the children and that a lack of contact with their parents would help the children settle (Disposition Order, Findings of Fact ¶ 34),

and that the children are far from being ready to reunify with their parents, if they ever could (Disposition Order, Findings of Fact ¶ 35).

With respect to the Respondent Mother, the Circuit Court found that the Respondent Mother had not attended therapy from March 16, 2009 to August 20, 2009 (Disposition Order, Findings of Fact ¶ 55), that the Respondent Mother's reasons for not attending therapy were unacceptable (Disposition Order, Findings of Fact ¶ 57), that the Respondent Mother would need three to four additional months of individual therapy to address the issues in her case plan before she could begin family therapy (Disposition Order, Findings of Fact ¶¶ 63, 65), that family therapy would be necessary before reunification could occur (Disposition Order, Findings of Fact ¶¶ 17, 65), and that the Respondent Mother had received sixteen months of parenting training but had not completed the program and was not ready for unsupervised visitation with her children (Disposition Order, Findings of Fact ¶ 69).

The Circuit Court concluded that neither parent was at a point to begin family therapy despite the amount of time that had passed since the children were removed. (Dispositional Order, Conclusions of Law ¶ 9). Additionally, the Circuit Court concluded

While the Court acknowledges the fact that the respondent, Anna [Y.] has a deep affection for her children, she clearly lacks the requisite judgment and mental stability to effectively protect the health, safety and welfare of her children, including addressing the children's significant mental health issues, at this time.

(Disposition Order, Conclusions of Law ¶ 3). The Circuit Court went on to conclude

Given the degree of the mental trauma suffered by the children, there is no question that after fifteen (15) months [of improvement periods] nothing more can be done to mitigate, or resolve, the family problems that exist in this case. The Court is, further of the opinion that the respondents failed to fully avail themselves of all the resources offered to them in order to correct the problems and deficiencies that led to the filing of this matter.

(Disposition Order, Conclusions of Law ¶ 14).

Despite the Circuit Court's above findings of fact and conclusions of law, the Circuit Court concluded that it was not necessary to terminate the Respondent Mother's parental rights because she "has committed herself to a course of treatment to remedy the conditions of abuse and neglect for which she is responsible." (Disposition Order, Conclusions of Law ¶ 26). The Department appeals the Circuit Court's decision to not terminate the Respondent Mother's parental rights.

III. ASSIGNMENTS OF ERROR

1. The Circuit Court abused its discretion by not terminating the Respondent Mother's parental rights because there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future. The Circuit Court found that the Respondent Mother had committed herself to a course of treatment to remedy the conditions of abuse and neglect and therefore her parental rights did not need to be terminated.

2. The Circuit Court abused its discretion by not terminating the Respondent Mother's parental rights because it is in the best interest of the children to terminate the Respondent Mother's parental rights. The Circuit Court found that granting the Respondent Mother a disposition pursuant to W.Va. Code § 49-6-5(a)(5) was appropriate because it allowed for a gradual transition period if the children are ever reunified with the Respondent Mother.

IV. STANDARD OF REVIEW

The standard of review for abuse and neglect cases is well established. The West Virginia Supreme Court has held

Although conclusions of law reached by a circuit court are subject to *de novo* review, when an action, such as an abuse and neglect case, is tried upon the facts without a jury, the circuit court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected. These findings shall not be set aside by a reviewing court unless clearly erroneous. A finding is clearly erroneous when, although there is evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. However, a reviewing court may not overturn a finding simply because it would have decided the case differently, and it must affirm a finding if the circuit court's account of the evidence is plausible in light of the record viewed in its entirety.

Syl. Pt. 1, In the Interest of: Tiffany Marie S., 196 W.Va. 223, 470 S.E.2d 177 (1996).

The West Virginia Supreme Court has also held

When this Court reviews challenges to the findings and conclusions of the circuit court, a two-prong deferential standard of review is applied. We review the final order and the ultimate disposition under an abuse of discretion standard, and we review the circuit court's underlying factual findings under a clearly erroneous standard.

Syl. Pt. 1, McCormick v. Allstate Ins. Co., 197 W.Va. 415, 475 S.E.2d 507 (1996).

V. ARGUMENTS AND DISCUSSIONS OF LAW

1. The Circuit Court abused its discretion by not terminating the Respondent Mother's parental rights because there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future.

The Circuit Court determined that the Respondent Mother's parental rights did not need to be terminated because the Respondent Mother had committed herself to a course of action to remedy the abuse and neglect. The Department disagrees and argues that there is no reasonable likelihood that the condition of neglect and abuse can be substantially corrected in the near future; therefore, the Circuit Court should have terminated the Respondent Mother's parental rights to Kristin, Arther, Scharlotte, and Eddy.

In discussing the appropriate disposition for an abuse and neglect case, West Virginia Code § 49-6-5(a)(6) states

Upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child, [the Circuit Court shall] terminate the parental, custodial and guardianship rights and responsibilities of the abusing parent . . .

The code goes on to define “no reasonable likelihood that conditions of neglect or abuse can be substantially corrected:”

“No reasonable likelihood that conditions of neglect or abuse can be substantially corrected” shall mean that, based upon the evidence before the court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help.

W.Va. Code § 49-6-5(b). This abuse and neglect case began on April 7, 2008, when the Department took emergency custody of Kristin, Arther, Scharlotte, and Eddy. On July 9, 2008, the Respondent Mother was granted a six month post-adjudicatory improvement period. That improvement period was extended for three months. On April 9, 2009, the Respondent Mother was granted a six month dispositional improvement period. At the end of the dispositional improvement period on October 9, 2009, despite having had services through an improvement period for fifteen (15) months, the Respondent Mother was still not in a position to have her children returned to her or to even have unsupervised visitation with her children. Given the length of her improvement periods and the fact that she was still not in a position to have unsupervised visitation with her children, the Respondent Mother demonstrated an inadequate capacity to solve the problems of abuse or neglect.

West Virginia code also gives specific examples of circumstances which indicate there is no reasonable likelihood that conditions of neglect or abuse can be substantially corrected, several of which apply to the Respondent Mother's case. "Such conditions shall be considered to exist in the following circumstances, which shall not be exclusive:"

(3) The abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation of insubstantial diminution of conditions which threatened the health, welfare or life of the child;

W.Va. Code § 49-6-5(b)(3). The testimony during the case revealed, and the Circuit Court found, that for six months during her improvement periods, the Respondent Mother failed to attend therapy. Disposition Order, Findings of Fact ¶¶ 55, 57. The Respondent Mother chose not to attend therapy for six months despite knowing that it was a requirement of her case plan and that it was necessary in order for her to be able to reunify with her children. Based on her noncompliance with therapy, the Respondent Mother failed to follow through with her reasonable family case plan. The Respondent Mother's failure to attend therapy threatened the welfare of her children because, without therapy, the Respondent Mother cannot be reunified with her children.

Furthermore, W.Va. Code § 49-6-5(b)(5) indicates that "no reasonable likelihood that conditions of neglect or abuse can be substantially corrected" includes

(5) The abusing parent or parents have repeatedly or seriously injured the child physically or emotionally, or have sexually abused or sexually exploited the child, and the degree of family stress and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems or assist the abusing parent or parents in fulfilling their responsibilities to the child.

The Circuit Court specifically found that

The children in this case have suffered severe trauma at the hands of the respondents. The testimony of the treating psychologists revealed that all of the children suffer from post traumatic stress disorder, that the eldest child has been institutionalized for a significant period of time and continues to remain unstable, that the other children continue to suffer from behavioral issues and sexual acting out, and continue to experience periods of instability to the point that they cannot be reunified. Further, the problems experienced by the children are so significant that they had to be separated into three different placements to protect them from acting out on each other, and have been in specialized foster care . . . Given the degree of the mental trauma suffered by the children, there is no question that after fifteen (15) months nothing more can be done to mitigate, or resolve, the family problems that exist in this case.

The Court is, further of the opinion that the respondents failed to fully avail themselves of all of the resources offered to them in order to correct the problems and deficiencies that led to the filing of this matter.

Disposition Order, Conclusions of Law ¶¶ 1, 14. The Department agrees with the Circuit Court's conclusions. The evidence clearly showed that despite being provided with services for fifteen (15) months of improvement periods, the Respondent Mother was unable to rectify the issues that caused the children to be removed. This was due, in part, to the trauma experienced by the children. In fact, the children's therapist testified that, due to the level of trauma experienced by the children, they were a long way from being able to reunify with their mother. Transcript of October 20, 2009 hearing 60:20 – 61:6, and 73:11 – 75:4.

Finally, W.Va. Code § 49-6-5(b)(7) includes the following in conditions that demonstrate no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected:

The battered parent's parenting skills have been seriously impaired and said person has willfully refused or is presently unwilling or unable to cooperate in the development of a reasonable treatment plan or has not

adequately responded to or followed through with the recommended and appropriate treatment plan.

The evidence during the hearings, including the Respondent Mother's own testimony, indicated that for six months during her improvement period the Respondent Mother was unwilling to participate in the individual therapy necessary to reunify with her children. Furthermore, despite having parenting classes for sixteen (16) months, the Respondent Mother's service provider testified that she was not at a place where she could have unsupervised visitation with her children. He also testified that she would not be able to parent her children by the end of her improvement period and that the Respondent Mother could not make any more progress with the parenting program. Transcript of August 7, 2009 hearing 46:14 – 47:15, and 52:10 – 53:22; *see also* Disposition Order, Findings of Fact ¶¶ 69. Whether the Respondent Mother was unable or unwilling to comply with her case plan, the evidence clearly showed that at the time of the final disposition hearing, the Respondent Mother had only sporadically complied with her case plan. Her inability to comply throughout the entire fifteen (15) month period left the Respondent Mother in a place where she could not reunify with her children.

The evidence during the abuse and neglect case clearly demonstrated that there is no reasonable likelihood that the Respondent Mother can reunify with her children in the near future. The Circuit Court nevertheless chose not to terminate the Respondent Mother's parental rights because she had "committed herself to a course of treatment to remedy the conditions of abuse and neglect for which she is responsible." Disposition Order, Conclusions of Law ¶¶ 26. This conclusion was based on the Circuit Court's finding that the Respondent Mother had again begun individual therapy to address her

issues. However, the testimony from the Respondent Mother's therapist indicated that another three to four months of individual therapy would be necessary before the Respondent Mother would even be in a position to begin the family therapy necessary before reunification could occur. Disposition Order, Findings of Fact ¶ 63. Even with family therapy, it is uncertain whether the children could reunify with the Respondent Mother. The West Virginia Supreme Court has stated

Although it is sometimes a difficult task, the trial court must accept the fact that the statutory limits on improvement periods (as well as our case law limiting the right to improvement periods) dictate that there comes a time for decision, because a child deserves resolution and permanency in his or her life . . .

State ex rel Amy M. v. Kaufman, 196 W.Va. 251, 260, 470 S.E.2d 205, 214 (1996).

Given the unknown amount of time that it will take for the Respondent Mother and the children to be in a position to reunify, the Circuit Court should have terminated the Respondent Mother's parental rights because there is no reasonable likelihood that the conditions of abuse and neglect can be rectified in the near future.

2. The Circuit Court abused its discretion by not terminating the Respondent Mother's parental rights because it is in the best interest of the children to terminate the Respondent Mother's parental rights.

The Circuit Court determined that it was in the children's best interest to allow the Respondent Mother an alternate disposition under W.Va. Code § 49-6-5(a)(5) rather than terminating her parental rights. The Department disagrees. It is well established in West Virginia law that the welfare of the child is the polar star by which permanency decisions must be made. The West Virginia Supreme Court has held

Although parents have substantial rights that must be protected, the primary goal in cases involving abuse and neglect, as in all family law matters, must be the health and welfare of the children.

Syl. Pt. 3, In re Katie S., 198 W.Va. 79, 479 S.E.2d 589 (1996). The best interest of the child includes terminating parental rights when necessary. As stated by the Supreme Court

Courts are not required to exhaust every speculative possibility of parental improvement before terminating parental rights where it appears that the welfare of the child will be seriously threatened . . . Syl. Pt. 1, in part, In re R.J.M., 164 W.Va. 496, 266 S.E.2d 114 (1980).

Syl. Pt. 7, in part, In the Interest of Carlita B., 185 W.Va. 613, 408 S.E.2d 365 (1991).

The evidence presented to the Circuit Court clearly demonstrated that termination of the Respondent Mother's parental rights was in the best interest of the children.

In its Disposition Order, the Circuit Court found that 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. Disposition Order, Findings of Fact ¶ 18. This finding of fact was based on the testimony from the children's therapist, Tammy Hamner. However, despite this finding, the Circuit Court chose to leave the children in limbo by not terminating the Respondent Mother's parental rights and instead leaving open the possibility that the children could one day return to her. By failing to terminate the Respondent Mother's parental rights, the Circuit Court continued to create uncertainty for the children regarding their future.

Likewise, Sharon McMillen, another therapist for the children, testified that visitation with their parents re-traumatized the children and kept them stuck in the past. She testified that a lack of contact with the parents would enable the children to settle in their placements and move on. Disposition Order, Findings of Fact ¶ 34. Ms. McMillen further testified that she did not know if she could ever give an opinion to reunify the children with the Respondent Mother given the amount of trauma that the children

experienced at the hands of their parents. Disposition Order, Findings of Fact ¶ 35. Despite Ms. McMillen's testimony regarding the harm that contact with the Respondent Mother has on the children, instead of terminating the Respondent Mother's parental rights and allowing the children to move on and settle in their foster homes, the Circuit Court chose to grant the Respondent Mother the opportunity to regain custody of her children after an indefinite period of time.

As stated above,

Although it is sometimes a difficult task, the trial court must accept the fact that the statutory limits on improvement periods (as well as our case law limiting the right to improvement periods) dictate that there comes a time for decision, because a child deserves resolution and permanency in his or her life . . .

State ex rel Amy M. v. Kaufman, 196 W.Va. 251, 260, 470 S.E.2d 205, 214 (1996). In this case, the Respondent Mother had fifteen (15) months of improvement periods to rectify the issues that led to her children's removal. Rather than complying with the terms of her case plan, the Respondent Mother chose not to attend individual therapy for six (6) months. The evidence during the hearings demonstrated that the children cannot be returned to the Respondent Mother without intense family therapy, which cannot begin until the Respondent Mother has at least three to four more months of individual therapy. Even with family therapy, the children's therapists do not know if the children can be reunited with the Respondent Mother. All the therapists involved with the children have indicated that contact with the Respondent Mother is detrimental until the Respondent Mother has addressed her issues in individual therapy. Unfortunately, the Respondent Mother failed to attend individual therapy during her improvement period and therefore, at disposition, had not reached a point that contact with the

children would be beneficial for them. The children in this case deserve permanency. Their therapists have stated that the children cannot settle until they know whether they will be returned. Because of the length of time that has past and the lack of progress on the Respondent Mother's part in her therapy, it is in the best interest of the children to terminate the Respondent Mother's parental rights and the Circuit Court erred in not doing so.

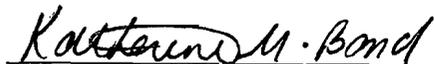
VI. PRAYER FOR RELIEF

WHEREFORE, the Department prays that this Court grant the Department's petition for appeal, vacate the decision of the Harrison County Circuit Court granting the Respondent Mother an alternate disposition five, and direct the Harrison County Circuit Court to terminate the Respondent Mother's parental rights to Kristin, Arther, Scharlotte, and Eddy. The Department asks for any such other general relief as the Court may deem fit.

Respectfully Submitted,

West Virginia Department of
Health and Human Resources,
by counsel.

DARRELL V. MCGRAW, JR.
ATTORNEY GENERAL



Katherine M. Bond
Assistant Attorney General
W.Va. State Bar #10000
Counsel for DHHR/BCF
9083 Middletown Mall
White Hall, WV 26554
(304) 368-4420 x79332
Fax (304) 368-4191
Katherine.M.Bond@wv.gov

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From Harrison County Abuse and Neglect Case Nos: 08-JA-21, 22, 23, and 24-3
The Honorable James A. Matish

CERTIFICATE OF SERVICE

I certify that I have, on this 18th day of January, 2011, served a true and accurate copy of the foregoing PETITION FOR APPEAL BY THE DEPARTMENT OF HEALTH AND HUMAN RESOURECS on all parties of record by sending a copy, via U.S. first-class mail, to the addresses below:

John S. Lanham, Esq.
Counsel for Respondent Mother
P.O. Box 14
Horner, WV 26372

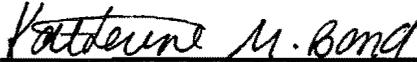
Brandon Kupec, Esq.
Counsel for party-in-interest, Virginia R.
228 Court Street
Clarksburg, WV 26301

April D. Conner, Esq.
Guardian ad Litem for Respondent Mother
427 West Pike Street, Suite 503
Clarksburg, WV 26301

Karen Betler, CASA
P.O. Box 1876
Clarksburg, WV 26301

Rebecca Pomeroy, Esq.
Guardian ad Litem for Children
P.O. Box 326
Bridgeport, WV 26330

Dreama D. Sinkkanen, Esq.
Counsel for Respondent Father
231 South Third Street
Clarksburg, WV 26301


Katherine M. Bond (#10000)
