No. 21908 - In Re: Elizabeth Jo "Beth", Debra Kay "Debbie" and Robert Lee "Robbie" H.

Workman, Justice, concurring:

I concur with the majority in order to expand upon their enunciation of the lower court's duty to fashion an improvement period, and to emphasize how vital it is not to permit this case and these children (and future cases involving other children) to get lost in some procedural shuffle.

First, the procedural shuffle: In 1991, we pointed out that West Virginia Code § 49-6-2(d) "clearly reflects the goal that such [abuse and neglect] proceedings must be resolved as expeditiously as possible. Syl. Pt. 5, in part, In re Carlita B., 185 W. Va. 613, 408 S.E.2d 365 (1991). After setting forth the long and tattered procedural history of Carlita B., and directing that child abuse and neglect cases be recognized as among the highest priority, we pointed out:

> protracted procedural histories are far too common a phenomenon in child abuse and neglect cases, as well as other child custody matters. Several cases with which we have dealt have involved similar extended periods of time without any real resolution for the child.
>
> . . . .

> Certainly many delays are occasioned by the fact that troubled human relationships and aggravated parenting problems are not remedied overnight. The law properly recognizes that rights of natural parents enjoy a great deal of protection and that one of the primary goals of the social services network and the courts is to give aid to parents and children in an effort to reunite them.
>
> The bulk of the most aggravated procedural delays, however, are occasioned less by the complexities of mending broken people and relationships than by the tendency of these types of cases to fall through the cracks in the system. The long procedural delays in this and most other abuse and neglect cases considered by this Court in the last decade indicate that neither the lawyers nor the courts are doing an adequate job of assuring that children--the most voiceless segment of our society--aren't left to languish in a limbo-like state during a time most crucial to their human development.

Id. at 622-23, 408 S.E.2d at 374-75.

The dissent is misguided in advocating remand for the preparation of an order more fully justifying its decision. The court below made it perfectly clear that it did not find the circumstances that these children were living in, as set forth by the unrefuted evidence, to constitute abuse or neglect. There were

[1]The court's order stated only that, "Based upon the evidence before the Court, the Court FINDS that the Petitioner has failed to sustain its burden of proof, and accordingly ORDERS that this matter be dismissed and stricken from the docket of this Court." The dissent is correct in that this essentially one-sentence order indicates that the court below, as appears to be the case with many

no credibility issues. The judge basically classified as de minimus evidence of very small children constantly running away from home, living amongst animal feces, being subject to a level of neglect so aggravated that the parents sometimes didn't even notify authorities when they disappeared for lengthy periods of time (in one case, an entire weekend), and having emotional problems so aggravated that an eight-year-old attempted suicide. Instead of making further inquiry into why these children are experiencing such problems, the court castigated the nine-year-old for all her problematic behaviors.

The practical effect of a remand for the development of a more extensive order would be (1) to delay for probably a year what this family desperately needs now: a meaningful improvement period,

---

other circuit courts, gave only cursory attention to the formulation of an order in this matter. This clearly flies in the face of this Court's admonitions in Carlita B. that these cases are both high priority and deserving of immediate and careful attention. See 185 W. Va. 613, 408 S.E.2d 365.

[2]The record reflects that the judge, upon hearing the evidence regarding the petition, stated, "This is just diminimus [sic] stuff, all of it."

[3]When evidence is presented which identifies developmental and emotional problems to the extent experienced by the children in this case, it should be a signal to the court that immediate attention is necessary, both from the standpoint of ascertaining underlying problems in the home and implementing interventive services to the children and their family.

including interventive services for the whole family; and (2) to add further delay to any real resolution of a case that will probably take a long time to resolve in any permanent manner anyway. The last thing we need is another hoop to jump through before these children get the kind of focused attention owed to them by the legal and child protective services.

Beth, Debbie and Robbie have waited long enough for help from a child protective services system that had already done too little for too long. According to the record, this family has been involved in the system since 1988, when the children were four, three, and one. We, as a system, have let their most crucial formative years go by without ever really addressing their problems.

The circuit court was absolutely correct that adult individuals may live amongst animal feces, emotional chaos, and total non-structure. That is their choice. But the court was clearly wrong as a matter of law in suggesting that evidence of children living in this fashion is insufficient to constitute abuse and neglect, once such conditions are brought to the attention of the system whose mission it is to protect them.

Upon remand, the circuit court should review carefully the case of In re Carlita B. in the event the parents move for an improvement period. See 185 W. Va. 613, 408 S.E.2d 365. As we directed in Carlita B.,

> In formulating the improvement period and family case plans, courts and social service workers should cooperate to provide a workable approach for the resolution of family problems which have prevented the child or children from receiving appropriate care from their parents. The formulation of the improvement period and family case plans should therefore be a consolidated, multidisciplinary effort among the court system, the parents, attorneys, social service agencies, and any other helping personnel involved in assisting the family. The goal should be the development of a program designed to assist the parent(s) in dealing with any problems which interfere with his ability to be an effective parent and to foster an improved relationship between parent and child with an eventual restoration of full parental rights a hoped-for result. The improvement period and family case plans must establish specific measures for the achievement of these goals, as an improvement period must be more than a mere passage of time. It is a period in which the D.H.S. and the court should attempt to facilitate the parent's success, but wherein the parent must understand that he bears a responsibility to demonstrate sufficient progress and improvement to justify return to him of the child.

Id. at 625, 408 S.E.2d at 377.

Following the formulation of any improvement plan, "it is imperative that the progress of the parent(s) toward the achievement

of enumerated goals be monitored closely." Id. As we emphasized in Carlita B.,

> The clear import of the statute is that matters involving the abuse and neglect of children shall take precedence over almost every other matter with which a court deals on a daily basis, and it clearly reflects the goal that such proceedings must be resolved as expeditiously as possible.

Id.

The improvement period should be carefully crafted and closely monitored on at least a monthly basis. This circuit judge must recognize that these children are not throwaway human beings; and further, that the way this case is handled may be the last best chance for effective intervention in their lives.