

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

Cleckley, Justice, dissenting:

I must dissent from the majority because their decision is contrary to the explicit legislative directives. Because of the vital importance of children's welfare in West Virginia, see In Interest of Carlita B., 185 W. Va. 613, 408 S.E.2d 365 (1991) (child abuse cases must be recognized as being among the highest priority for the court's attention), the legislature has made some procedural requirements mandatory. One such mandatory procedure is the requirement that the circuit court make specific findings of fact and conclusions of law to support its decision. Specifically, at the close of the adjudicatory hearing in an abuse and neglect case, the circuit court is required under W. Va. Code, 49-6-2(c) (1992), to "make findings of fact and conclusions of law as to whether such child is abused or neglected."¹ See State v. T.C., 172 W. Va. 47,

¹W. Va. Code, 49-6-2(c), states, in pertinent part:

"At the conclusion of the hearing the 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, which shall be incorporated into the order of the court. The findings must be based upon conditions existing at the time of the filing of the petition and

303 S.E.2d 685 (1983). The circuit court failed to do so in this case. The order merely states that "the Petitioner has failed to sustain its burden of proof, and accordingly . . . this matter [is] dismissed and stricken from the docket[.]" In Syllabus Point 1 of State v. T.C., supra, we state:

"In a child abuse and neglect hearing, before a court can begin to make any of the dispositional alternatives under W. Va. Code, 49-6-5, it must hold a hearing under W. Va. Code, 49-6-2, and determine 'whether such child is abused or neglected.' Such a finding is a prerequisite to further continuation of the case."

At this juncture, the only error committed by the circuit court was dismissing this case without making a proper determination of the evidence of abuse and neglect.

In our earlier case of State v. Clark, 171 W. Va. 74, 79, 297 S.E.2d 849, 854 (1982), we offered the following explanation as to why compliance with a similar procedure was important:

"Basing its decision on the preponderance standard, the trial court must make findings of fact and conclusions of law regarding the admissibility of the evidence. When credibility of the witnesses is determinative on the issue of whether to admit or exclude evidence, the trial court must clearly indicate why it chose to believe one

proven by clear and convincing proof."

witness more than another. Such findings and conclusions are necessary so that this Court may properly fulfill its appellate review obligations by ensuring that the state did or did not meet its burden of proof."

In the case at bar, it is virtually impossible to review the conclusion made below without the assistance of the circuit court's specific findings and some evaluation as to how the evidence of the State was deficient. The sincerity and credibility of the State's witnesses is impossible to gather from the record before us. We need to know why the circuit court dismissed this case. The credibility of the witnesses and the weight accorded their testimony are matters solely within the discretion of the circuit court. Accordingly, I would remand this case with directions to comply with W. Va. Code, 49-6-2(c), giving the circuit court a reasonable chance to justify its decision.