

# **Workman, C.J. Concurring Opinion, Case No.23888 In Re: William John R., Dana R., & Sidney L., Jr.**

No. 23888 - In re: William John R., Dana R., and Sidney L., Jr.

Workman, C.J., concurring:

While I agree with the majority's ultimate conclusion affirming the final order of the Circuit Court of Marshall County, I write separately to emphasize the importance of the circuit court taking the time to develop a workable plan for a continued relationship between these children and their mother. This case is a hard one, not only because of the geographic distance between the children and their mother made a meaningful improvement period difficult, but also because of the strong emotional bond that still exists between these children and their mother. Because the record clearly demonstrates Appellant's limited ability to care for the special needs of her children and because these children have a permanent foster home placement (with parents willing to make a permanent commitment to them and with whom they have lived for three years), I agree that it is in the children's best interest to affirm the placement. As this Court stated in In re Carlita B., 185 W. Va. 613, 408 S.E.2d 365 (1991):

In the difficult balance which must be fashioned between the rights of the parent and the welfare of the child, we have consistently emphasized that the paramount and controlling factor must be the child's welfare. "[A]ll parental rights in child custody matters," we have stressed, "are subordinate to the interests of the innocent child." David M., 182 W. Va. [57,] at 60, 385 S.E.2d [912,]at 916 [(1989)].

Id. at 629, 408 S.E.2d at 381. Nevertheless, it also is important in appropriate cases to develop a meaningful plan for children to have a continued relationship with their parents. See generally Syl. Pt. 5, In re Christina L., 194 W. Va. 446, 460 S.E.2d 692 (1995).<sup>(1)</sup> The majority recognizes such a situation exists in this case and, therefore, remanded this case for the circuit court to develop and execute a plan of supervised visitation.

In developing this plan, the circuit court must take care in assuring that the plan is realistic and workable. This evaluation shall include even the most basic of issues that must be resolved in order for the children to have visitations with Appellant. For instance, by way of analogy, in footnote fifteen of In re Carlita B., this Court mentioned with respect to improvement periods that the circuit court must be apprised of any foreseeable "obstacles to compliance with the plan of improvement, and the court should make any directives necessary to obliterate such obstacles." 185 W. Va. at 625 n.15, 408 S.E.2d at 377 n.15. For example, we said "[i]f the parent indicates he is unable to attend a specified program due to lack of transportation or conflict with hours of employment, the circuit court can direct the D.H.S. to assist with transportation or arrange a program which does not conflict with the parent's work schedule." Id. Likewise, in the instant case, to meet the best interest of these children, the circuit court may find it necessary to involve itself in the most minute of details, such as specifically directing the Department to provide bus (or other) transportation for Appellant in order to get her to and from her visits, or arranging and paying for lodging if Appellant cannot afford it. Although these details seem tedious and mundane, unless the time is taken to examine considerations like these, the visitation plan will be useless and, inevitably, the children will not have the benefit of a continued relationship with someone they love.

These permanent foster care parents also will have challenges before them. Broken human relationships (and in this case, a long-distance continued relationship with the mother) can be inconvenient and at times discouraging for these foster parents. The Department should also work to assist them in the transition to this new arrangement. If needed, the children, the foster parents, and the biological mother should be provided with family counseling.

In other words, the lower court on remand will be called upon to do both legal and social work to help make this work for the children. However, if the judge is successful, the work he does here will be more meaningful and significant than any multi-million dollar civil litigation he might preside over.

1. Syllabus point 5 of In re Christina L. provides:

When parental rights are terminated due to neglect or abuse, the circuit court may nevertheless in appropriate cases consider whether continued visitation or other contact with the abusing parent is in the best interest of the child. Among other things, the circuit court should consider whether a close emotional bond has been established between parent and child and the child's wishes, if he or she is of appropriate maturity to make such request. The evidence must indicate that such visitation or continued contact would not be detrimental to the child's well being and would be in the child's best interest.

Id.