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Starcher, Justice, dissenting:

It always has struck me as somewhat counter-productive for judges to tell people who are before the court for misconduct, “I don’t want to see you back here again.” It would be much more realistic to say, “Well, we want you to shape up, but we recognize that we may well see you back here again, and we can handle that possibility also. We are not going to give up on you.”

This attitude, of expecting that people will “mess up” on occasion, “stumble as they learn to walk,” is applicable in spades to people with substance abuse problems.

After all, if it were easy to overcome a substance abuse problem, a high percentage of the people in jail would probably not be there. Therefore, the fact that this mother did not promptly “overcome” her substance abuse problem is simply not grounds to take her children away from her permanently.

The majority opinion disregards the less severe alternative of removing the children from the home temporarily. If the mother over time shows no signs of improving, the Department can then seek a modification and termination. *W.Va. Code*, 49-6-5(a)(5).

I am always reluctant to second-guess trial judges in cases like this. But I think

that the Court in the instant case could and should have given this mother more time – and should have made the DHHR do something more than say, “She won’t cooperate.”

Accordingly, I dissent.