

FILED
July 6, 2004
released at 10:00 a.m.
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Davis, J., dissenting:

In this case the majority has affirmed a decision of the circuit court terminating a mother's parental rights without first giving her the benefit of either a post-adjudicatory or pre-disposition improvement period.¹ Given the particular facts presented in this case, the result reached by the majority is simply wrong. I strongly believe that the appellant, Wanda S., was entitled to the benefit of an improvement period before the decision to terminate her parental rights was made. For this reason, I dissent.

While the evidence in this case makes clear that past efforts to provide services to Wanda S. had not been successful, the record is equally clear that the services in no way addressed Wanda S.'s fundamental problem, her post-traumatic stress condition. As the majority opinion recognizes, a psychological report filed by Dr. Thomas Stein opined that Wanda S.'s "inability to protect her children originated in her underlying personality which developed from the sexual abuse she suffered as a child." Maj. op. at 4. Dr. Stein concluded

¹This woman likewise did not receive a pre-adjudicatory improvement period. She filed a motion for a pre-adjudicatory improvement period, but then withdrew the motion at the adjudication hearing.

that the “likelihood of [Wanda S.] fully and completely discharging her parenting responsibilities in an appropriate manner would be *dramatically enhanced*” following effective treatment.

I believe that Dr. Stein’ conclusions, when considered along with the steps this woman did take to protect her children, i.e. reporting their sexual abuse when she became aware of it, divorcing her abusive husband, and the positive reports generated from her visits with her children following their removal from her home, constitute clear and convincing evidence that Wanda S. was “likely to fully participate in the improvement period” W. Va. Code § 49-6-12(b)(2) (1996) (Repl. Vol. 2001). Consequently, Wanda S. should have been granted an improvement period before any decision of whether or not to terminate her parental rights was made.²

In view of the foregoing, I respectfully dissent.

²When considering the result reached in this case in connection with another case rendered this Term of Court the message the majority seems to be sending is that when a young man is subjected to sexual abuse as a child, and as a result thereof he becomes a sexual predator who preys on young children, he is deserving of every conceivable chance that may be given him. Conversely, when a woman has been subjected to sexual abuse as a child, and as a result thereof she does not become a sexual predator, but by virtue of the emotional scars of her abuse finds herself unable to protect her children from abuse at the hands of others, she is not deserving of a reasonable chance to receive appropriate psychotherapeutic intervention prior to having her parental rights to her children terminated.