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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 16-0003 – *Lawyer Disciplinary Bd. v. Thompson*

WORKMAN, J., concurring in part and dissenting in part:

It is disheartening that the majority has chosen to prioritize protecting the financial interests of a member of the bar over the protection of the children of Mingo County. This case cries out for the application of Syllabus Point 2 of *In re Daniel*, 153 W. Va. 839, 173 S.E.2d 153 (1970): "Disbarment of an attorney to practice law is not used solely to punish the attorney but is *for the protection of the public* and the profession." (emphasis added). While I concur in the three-month suspension imposed by the majority, its refusal to bar respondent from hereafter representing court-appointed infants in abuse and neglect and family court matters is irresponsible and dangerous to the weakest, most voiceless group of children in society. The respondent's offense in this matter is not merely an untimely filing, which this Court unfortunately sees regularly. Rather, it is conduct so completely lacking in the judgment and competence needed to properly protect these most vulnerable clients that it calls for an individualized sanction designed not to be overly punitive to the lawyer, but to protect these vulnerable children. Accordingly, while I concur in the suspension issued by the majority, I would permanently bar respondent from taking court appointments as guardian ad litem in abuse/neglect and family law matters. I would further require that she petition for reinstatement and undergo one year of supervised practice subsequent to any reinstatement. Critically, due to the unique circumstances presented in this case, I would

also require respondent to undergo a psychological evaluation prior to any petition for reinstatement.

Respondent in this matter willfully refused to file a brief on behalf of her infant client in a pending abuse and neglect appeal.[1] She explained that she did so in a purported attempt to garner this Court's attention regarding what she perceived were inadequacies with the Mingo County Department of Health and Human Resources ("DHHR"). This puzzling "explanation," however, was not the first nor last offered by respondent. Initially, she claimed she simply was unaware of the appeal due to staffing issues and stated as much in her first response to this Court's rule to show cause. The day before argument on the rule, however, she changed her story, stating that her failure to file a brief was deliberate and for the purpose of gaining an audience with the Court to air her grievances about DHHR. Before the Hearing Panel Subcommittee ("HPS"), respondent then began to alternate between this justification and some intimation that she

[1] Respondent's brief was initially due on May 20, 2015. On May 22, 2015, a member of this Court's Clerk's office left a message with respondent's office advising her brief was past due. On May 27, 2015, this Court issued a notice of intent to sanction ordering respondent to file a brief on or before June 1, 2015. On June 5, 2015, a member of the Clerk's office sent an email to respondent advising of the Notice of Intent to Sanction, to which respondent replied that she was unaware of the appeal, but would address it that day. On June 11, 2015, this Court issued a rule to show cause, receipt of which respondent acknowledged by her return receipt signature on June 17, 2015. Having still received no brief and in view of the pending rule to show cause, this Court's Clerk's office again telephoned respondent's office on July 5, 2015, July 23, 2015, August 7, 2015, August 14, 2015, and August 31, 2015, to inquire about respondent's brief. On September 1, 2015—nearly three and a half months after it was originally due and after *nine* separate communications from this Court—respondent filed a motion to file her brief out of time and an accompanying, one-page brief.

had actually reconsidered her position on the propriety of termination of the parental rights in the appeal and therefore was uncertain what position to adopt in her brief. Respondent offered further non-specific rationalizations of her behavior to the effect that she was "crazy," "dug in," and emotionally affected by the trauma of her sister's death. At this point, because of respondent's vacillating reasons, it is unclear precisely what type of conduct or issues this Court's discipline should even attempt to address: self-aggrandizing delusion, simple neglect, gross incompetence, a lapse in judgment, or emotional issues.

What is clear, however, is that respondent fails entirely—even at this juncture—to appreciate the significance and inappropriateness of her actions, as my colleague Chief Justice Loughry details at length. Respondent's conduct did not simply delay "paperwork," as she stated in her response to the rule to show cause, but the permanence of a family unit desperately needed for a child so young.[2] Such a lack of regard for the effect these proceedings have on children, parents, and adoptive families or other permanency arrangements demonstrates a lack of understanding of the very values our abuse and neglect system seeks to preserve. As the United States Supreme Court has explained:

> [T]he importance of the familial relationship, to the individuals involved and to the society, stems from the

[2] As detailed by Chief Justice Loughry, respondent indicated that the delay in permanency she caused "suck[ed]" and that she regretted that her delay may have precluded the adoptive parents from having an "enjoyable summer."

> emotional attachments that derive from the intimacy of daily association, and from the role it plays in "promot(ing) a way of life" through the instruction of children, as well as from the fact of blood relationship. No one would seriously dispute that a deeply loving and interdependent relationship between an adult and a child in his or her care may exist even in the absence of blood relationship. At least where a child has been placed in foster care as an infant, has never known his natural parents, and has remained continuously for several years in the care of the same foster parents, it is natural that the foster family should hold the same place in the emotional life of the foster child, and fulfill the same socializing functions, as a natural family. For this reason, we cannot dismiss the foster family as a mere collection of unrelated individuals.

Smith v. Org. of Foster Families For Equal. & Reform, 431 U.S. 816, 844 (1977) (citations omitted). Moreover, this Court long-ago observed that

> the early, most formative years of a child's life are crucial to his or her development. There would be no adequate remedy at law for these children were they permitted to continue in this abyss of uncertainty. We have repeatedly emphasized that children have a right to resolution of their life situations, to a basic level of nurturance, protection, and security, and to a permanent placement.

State ex rel. Amy M. v. Kaufman, 196 W. Va. 251, 257, 470 S.E.2d 205, 211 (1996) (citing *In re Carlita B.*, 185 W.Va. 613, 623, 408 S.E.2d 365, 375 (1991)).

Furthermore, respondent's suggestion that because the child was, in fact, an infant and therefore did not realize or understand any delay because he was with his planned adoptive family is a disturbingly myopic view of our abuse and neglect system. As described through the testimony of the adoptive parents, respondent's audacious refusal to file a brief in her client's matter complicated obtaining critical medical

treatment for the infant. It created extreme anxiety for a mother and father who had fostered this child since he was four months old and were, in every sense, his parents. The fear they articulated before the HPS about the potential for a previously-disinterested relative to suddenly appear and potentially derail the child's life and their adoption plans, tearing their family asunder, was emotional and heart-breaking. The dissolution and re-establishment of familial units occasioned by our abuse and neglect system occupy "a unique place in our legal culture, given the centrality of family life as the focus for personal meaning and responsibility." *Lassiter v. Dep't of Soc. Servs. of Durham Cty., N. C.*, 452 U.S. 18, 38 (1981) (Blackmun, J., dissenting). In this or a similar future case, the proceedings may not result in termination of parental rights and the longer a child spends bonding with one family before unceremoniously being removed and placed with an entirely different family, the greater the short-term and long-term emotional harm to that child. To dismissively minimize the effect of her delay demonstrates respondent's complete lack of appreciation for the real people and real lives affected daily by these proceedings. In my opinion, anyone who demonstrates this attitude or this level of incompetence should quite simply not be appointed by the court system to represent these vulnerable children. Accordingly, this Court's sanctions should have included a prohibition from acting as guardian ad litem in abuse and neglect and family law matters[3]

[3] *See* West Virginia Rules of Practice and Procedure for Family Court, "Appendix B: *Guidelines for Guardians ad Litem in Family Court*" ("Courts shall not routinely assign guardians ad litem for children or require court-ordered investigations unless the court has reasonable cause to suspect the parenting issues involve a child's safety or the (continued . . .)

in the future, as expressly permitted by West Virginia Rule of Lawyer Disciplinary Procedure 3.15: "[T]he Supreme Court of Appeals may impose any one or more of the following sanctions for a violation of the Rules of Professional Conduct . . . . (3) limitation on the nature or extent of future practice[.]"

However, the majority appears curiously preoccupied with respondent's future practice and resultant personal economic consequences were this Court to continue its bar against her work as guardian ad litem. The majority should be more concerned about the safety of abused and neglected children in Mingo County rather than the protection of the lawyer's income. I will not belabor the obviously distorted priorities that this reflects, or the ostensible attitude that this level of representation is "good enough" for the children of Mingo County. Instead, I focus on how this concern about respondent's practice is not only inappropriate but also patently wrong. The majority indicates that the approximate seventeen-month ban on abuse and neglect appointments preceding this matter[4] has occasioned a 90% decrease in respondent's income. As a

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best interest of the child warrants further investigation by the court. . . . Provided, however, that when serious allegations of abuse and neglect or issues relating to the child's health and safety are raised, the family court shall appoint a guardian ad litem."). *But see* Order Re: Request for Public Comment and Provisional Approval of Proposed Amendments to Certain Guardian Ad Litem Rules for Family Court, Docket No. 17-Rules-02 (March 8, 2017) (http://www.courtswv.gov/legal-community/requests-for-comment.html).

[4] This prohibition was part of the Court's sanction upon finding respondent in contempt.

result, the majority seemingly appears concerned that a future prohibition on guardian ad litem work would effectively "wipe out" respondent's practice, gravely noting the "less satisfactory office space" and reduction in staff caused by the "embargo" on her appointed work. In fact, respondent herself suggested as much in her brief before this Court. [5]

It is clear, however, that this reduction in income is occasioned by two more obvious factors that for some reason the majority fails to recognize: 1) respondent's self-imposed withdrawal from practice by going "inactive" with the State Bar after this Court held her in contempt in September 2015[6]; and 2) her inability to receive court appointments from the sitting Mingo County Circuit Judge, who is her mother. The majority completely overlooks respondent's admission that she went "inactive" when she was held in contempt. Frankly, this should have resulted in a 100% reduction in her practice and income, yet somehow she maintains that was merely 90%. Moreover, respondent herself admits that as of 2015 when her mother was appointed and

[5] What respondent actually stated, however, was that the combined effect of the contempt order, preclusion from federal court appointments, and being the "subject of media attention local and State-wide" reduced her caseload ninety percent.

[6] In her brief, respondent states in footnote five: "Lauren Thompson has withdrawn from her practice and active membership in the West Virginia State Bar since the Court's Order holding her in contempt." The memorandum decision holding her in contempt was filed on September 30, 2015.

subsequently elected to the circuit court, she could no longer receive court appointments.[7] It would appear then, due to the lapse of time, that respondent is just now realizing the effects of this attrition on her caseload and income.

More importantly, any histrionics suggesting that a ban on future guardian ad litem appointments would be devastating to respondent's practice are completely unfounded. Respondent herself stated she enjoyed a "lively and profitable personal injury practice." In fact, she previously appeared before this Court on a breach of contract action.[8] Respondent stated in her affidavit to this Court, "I take nearly a third as much pro bono work as I do retained work." Not only would this one-third also apparently include criminal appointments—which she could continue to do—but plainly reveals that the majority of respondent's practice was *not* in fact guardian ad litem work. How respondent or other members of this Court manage to equate 90% with one-third is unclear. Finally, respondent herself stated that she had no intention of accepting future

[7] Respondent continued, however, to receive appointments from the recusal judge assigned to Mingo County for matters her mother could not hear as a result of her prior work as a family law judge. The number of those matters, obviously, would have been at their highest number when her mother was first appointed and will necessarily continue to wane over time.

[8] *Beverly v. Thompson*, 229 W.Va. 684, 735 S.E.2d 559 (2012).

abuse and neglect appointments and is much happier with her "life and practice" (such as it could possibly be given that she is "inactive" with the Bar) without such work.[9]

There can be no question that court-appointed infant clients in abuse and neglect matters are the most vulnerable victims in our judicial system. They deserve the very best of any lawyer who is appointed as a guardian ad litem: the most conscientious, deliberate, thoughtful, and mature representation. These children should not be relegated to those unable—either emotionally or professionally—to represent their interests with a high degree of competence, compassion, and vigor. Nor should they be placed at the bottom of the heap in this Court's prioritization of the importance of the protection of the public generally. Tragically, these proceedings all too frequently have life-or-death consequences, as illustrated in many cases where children have died as the result of abuse and/or neglect.[10] The majority's refusal to act in a manner which protects abused and

[9] In her affidavit, respondent unequivocally stated, "I will never accept any Guardian Ad Litem appointments for children again."

[10] *See State v. Souther,* No. 15–1241, 2017 WL 969145 (W. Va. March 13, 2017); *State v. Louk*, 237 W.Va. 200, 786 S.E.2d 219 (2016); *State v. McDaniel*, 238 W.Va. 61, 792 S.E.2d 72 (2016); *State v. Cassidy B.*, No. 15–0404, 2016 WL 2977309 (W. Va. May 23, 2016); *In re S.J.*, No. 15–0043, 2015 WL 3687807 (W. Va. June 15, 2015); *State v. Rogers*, No. 14–0373, 2015 WL 869323 (W. Va. January 9, 2015); *In re S.W.*, 233 W.Va. 91, 755 S.E.2d 8 (2014); *State v. Skupnick*, No. 13–0746, 2014 WL 2463002 (W. Va. June 2, 2014); *State v. Chic-Colbert*, 231 W.Va. 749, 749 S.E.2d 642 (2013); *State v. Meadows*, 231 W.Va. 10, 743 S.E.2d 318 (2013); *State v. Linger*, No. 11–1686, 2013 WL 1501422 (W. Va. April 12, 2013); *In re D.R.*, No. 12–0848, 2012 WL 5851934 (W Va. November 19, 2012); *In re A.H.*, No. 12–0225, 2012 WL 3155738 (W. Va. June 25, 2012); *State v. Hunter*, No. 11–0633, 2012 WL 2914284 (W. Va. February 13, 2012); *State v. Jenkins*, 229 W.Va. 415, 729 S.E.2d 250 (2012); *State v. Thornton*, 228 W.Va. (continued . . .)

neglected children from inadequate representation minimizes the profound, real-life consequences of our actions in cases such as this. These children helplessly rely on their court-appointed counsel to speak on their behalf and hold their interests paramount. When a lawyer demonstrates an egregious failure or refusal to do so and this Court does not take measures to ensure it does not happen again, we abdicate our duty to the public and potentially make the judicial system complicit in death or serious injury to children. It is because of the paramount importance of these interests and respondent's utter disregard of them that I would permanently bar her from taking court appointments as guardian ad litem in *both* abuse and neglect and family law matters.[11] Because of the seriousness of her conduct, I would further require that she petition for reinstatement and undergo one year supervised practice subsequent to any reinstatement. The majority's refusal to impose any of these additional sanctions—particularly supervised practice—is

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449, 720 S.E.2d 572 (2011); *State v. Thompson*, 220 W.Va. 246, 647 S.E.2d 526 (2007); *State v. Mongold*, 220 W.Va. 259, 647 S.E.2d 539 (2007); *State ex rel. Diva P. v. Kaufman*, 200 W.Va. 555, 490 S.E.2d 642 (1997); *West Virginia Dept. of Health and Human Resources ex rel. Wright v. Doris S.*, 197 W.Va. 489, 475 S.E.2d 865 (1996); *In re Brianna Elizabeth M.*, 192 W.Va. 363, 452 S.E.2d 454 (1994); *State v. Jessica M.*, 191 W.Va. 302, 445 S.E.2d 243 (1994).

[11] As previously stated, this prohibition would not include criminal appointments. Unlike children, an adult criminal defendant, in the event his or her lawyer fails to adequately represent his or her interests, has the means with which to communicate with his lawyer about such inadequacies or, failing other measures, could communicate about such inadequacies with Office of Disciplinary Counsel or the Court.

quite notably disparate from other similar offenders.[12] *See Lawyer Disciplinary Board v. Palmer,* No. 15-0977, slip op. (W. Va. April 6, 2017) (requiring six-months' supervision following thirty–day suspension); *Lawyer Disciplinary Board v. Sturm*, 237 W.Va. 115, 785 S.E.2d 821 (2016) (requiring two-years' supervision following ninety-day suspension), *Lawyer Disciplinary Board v. Thorn*, 236 W.Va. 681, 783 S.E.2d 321 (2016) (requiring one-year supervision following one-year suspension); *Lawyer Disciplinary Board v. Conner*, 234 W.Va. 648, 769 S.E.2d 25 (2015) (requiring two-years' supervision following ninety-day suspension). Perhaps the majority somehow observes a "Mingo County exception."

Finally, as indicated above, I further believe the peculiar circumstances of this case require the not uncommon sanction that respondent be required to undergo a psychological evaluation. My recommendation in this regard is in no way designed to embarrass or humiliate respondent, but is borne out of a sincere concern for her mental and emotional well-being—both matters which she squarely placed into issue in this matter in defense of her conduct. Respondent's counsel suggested before the HPS and in briefs to this Court that respondent's judgment and behavior during the pertinent time

[12] The majority should not need to be reminded that consistency and fairness in lawyer disciplinary matters should be of paramount importance to the Court. *See Lawyer Disciplinary Bd. v. Grindo*, 231 W. Va. 365, 370, 745 S.E.2d 256, 261 (2013) (noting that disciplinary factors are designed for the purpose of "achieving both consistency and fairness in lawyer disciplinary matters").

period were affected by her sister's untimely death.[13] It is understandable that grief can affect one's ability to practice law; however, to the extent it has affected respondent, it should be dealt with before she returns to practice. Moreover, to whatever extent her family tragedy was not the reason for her poor judgment, it is clear that respondent's bizarre perception of the events culminating in this matter necessitates an evaluation of her psychological well-being. Respondent's belief that it was appropriate to use this child and family as an "example" to vindicate her perceived shortcomings with DHHR is troubling. This is not only troubling to the extent that respondent regarded this child's case as the "sacrificial lamb" to address these issues, but even more so in that she even failed to follow through with this purported goal altogether. The contempt shown to this Court through her continual disregard of its orders and attempts at contact is something to which, unfortunately, this Court is no stranger. However, respondent's conduct was amplified by her mystifying belief that the rule to show cause was tantamount to being the Court's invited guest for the purpose of enlightening us with her thoughts and concerns about DHHR, none of which ever materialized. These injudicious, if not absurd, decisions and perceptions by a practicing attorney are so confounding as to require further evaluation.

Accordingly, I respectfully concur in part and dissent in part.

[13] Notably, however, respondent made little to no mention of this circumstance in the myriad written and oral explanations offered in the underlying matter.