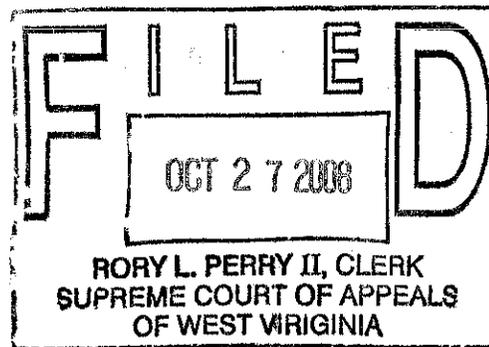


**IN THE SUPREME COURT OF APPEALS FOR**  
**THE STATE OF WEST VIRGINIA**

**Case Number: 34342**

**IN THE INTEREST OF:**

**MARANDA T.**



**BRIEF FOR RESPONDENT**  
**MARTHA T.**

Jason R. Grubb  
(Bar ID No. 9559)  
Counsel for Petitioner  
PO Box 2056  
Beaver, WV 25813  
(304)763-5122

TABLE OF CONTENTS

Table of Authorities.....ii

I. KIND OF PROCEEDING AND RULING BELOW.....1

II. STATEMENT OF THE CASE.....1

III. STATEMENT OF FACTS.....2

IV. STANDARD OF REVIEW.....3

V. THE ASSIGNMENTS OF ERROR RELIED UPON APPEAL AND THE MANNER IN WHICH THEY WERE DECIDED IN THE LOWER TRIBUNAL.....4

VI. POINTS AND AUTHORITIES RELIED UPON, A DISCUSSION OF LAW, AND RELIEF PRAYED FOR. .....4

A. **The Circuit Court erred by denying respondent mother’s motion for dispositional improvement period.** .....4

B. **The Circuit Court erred by terminating the respondent mother’s rights.** .....4

VII. CONCLUSION. .....7

TABLE OF AUTHORITIES

Cases

**In Re: Billy Joe M. and Jason M.** 521 S.E. 2<sup>nd</sup> 173 (WV 1999).... .4  
**In re Billy Joe M.**, 206 W. Va. 1, 521 S.E.2d 173 (1999).....5  
**In Re: Daniel D. and Samantha D.**, 562 S.E. 2<sup>nd</sup> 147, (WV 2002)...5

## I. KIND OF PROCEEDING AND RULING BELOW

Petitioner Martha T. appeals the Order of April 15, 2008, terminating her parental, custodial and guardianship rights.

## II. STATEMENT OF THE CASE

By Order dated March 7, 2007, the West Virginia Department of Health and Human Resources, Child Protective Services (hereinafter "the Department"), was granted temporary custody of respondent mother's, Martha T., child Maranda T. On April 6, 2007 an adjudicatory hearing was held in which the respondent mother was found to have abused and neglected the infant child, as reflected in Order dated April 18, 2007. On May 11, 2007 the respondent mother moved for and was granted an improvement period and the respondent father was set for a dispositional hearing, as reflected in the Order dated May 31, 2007. On July 26, 2007, the respondent mother's improvement period was continued and the rights of the respondent father were terminated, as reflected in Order dated July 16, 2007. On October 5, 2007 a review hearing was held at which time the previously terminated father was dismissed from the proceedings and the respondent mother's improvement period was continued, as reflected by Order dated October 23, 2007. The Department did not oppose and the guardian ad litem stated her reservations. By Order dated January 8, 2008, the extension was

granted. On February 1, 2008, this matter was scheduled for a review, at which time the Department and guardian ad litem moved for this matter to be set for disposition, and the respondent mother moved for a dispositional improvement period. The Order was entered on February 13, 2008. By Order dated April 15, 2008, the ruling of the court, from the hearing of April 4, 2008 was entered, terminating the rights of the respondent mother, Martha T., and her motion for dispositional improvement period was denied.

### III. STATEMENT OF FACTS

This case was opened in the Circuit Court of Mercer County, West Virginia on March 7, 2007. Throughout the proceedings the respondent mother was cooperative with the Department and all service providers. It is evident the respondent mother has limitations in her mental capabilities. It is equally evident that she truly loves and cherishes her daughter and has worked diligently to comply with the family case plan. The Department expressed concerns regarding the respondent mother's cognitive abilities regarding parenting. The guardian ad litem shared the concerns. Cheryl Taylor, the professional contracted with by the Department to evaluate the respondent mother found her to be in the lower range of mildly impaired persons, but stated that it is still possible to parent with those limitations,

with a long term support system. Melanie Thompson, the professional contracted with by the Department to provide services to the respondent mother, stated that the respondent mother has made improvements, has in place a support system, has improved in many aspects of her life, but would need permanent assistance to care for the infant child. The Department's caseworker, Crystal Tabor, stated that the respondent mother has improved in this case. Even the strongest opponent to the improvement period, Gail Moran, with whom the Department contracted to provide services to the infant child, admitted the respondent mother has made improvements, but stated that said improvements were not consistent. She also stated the respondent mother would need long term services to provide for and protect the infant child.

The Respondent Mother admittedly has cognitive limitations, but disagrees with the idea she cannot care for her child, and adequately protect her, with long term assistance, which she is willing to accept.

#### IV. STANDARD OF REVIEW

The standard of review of a Circuit Court's ruling regarding a Juvenile Abuse and Neglect matters has been clearly defined by this Honorable Court as follows:

When an abuse and neglect case is tried upon the facts without a jury, the circuit 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. These findings shall not be set aside by a reviewing court unless clearly erroneous. A finding is clearly erroneous when, although there is evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. However, a reviewing court may not overturn a finding simply because it would have decided the case differently, and it must affirm a finding if the court's account of the evidence is plausible in light of the record viewed in its entirety. **In Re: Billy Joe M. and Jason M.** 521 S.E. 2<sup>nd</sup> 173 (WV 1999).

**V. THE ASSIGNMENTS OF ERROR RELIED UPON APPEAL AND THE MANNER IN WHICH THEY WERE DECIDED IN THE LOWER TRIBUNAL.**

- A. The Circuit Court erred by denying respondent mother's motion for dispositional improvement period.**
- B. The Circuit Court erred by terminating the respondent mother's rights.**

**VI. POINTS AND AUTHORITIES RELIED UPON, A DISCUSSION OF LAW, AND RELIEF PRAYED FOR.**

- A. The Circuit Court erred by denying respondent mother's motion for dispositional improvement period.**
- B. The Circuit Court erred by terminating the respondent mother's rights.**

The argument and authorities on both points of the instant petition are substantially the same. For clarity, both issues will be addressed together.

The duty of the Circuit Court regarding improvement periods in juvenile abuse and neglect cases has been clearly stated by this Honorable Court as follows:

At the conclusion of the improvement period, the court shall review the performance of the parents in attempting to attain the goals of the improvement period and shall, in the court's discretion, determine whether the conditions of the improvement period has been satisfied and whether sufficient improvement has been made in the context of all circumstances of the case to justify the return of the child. **In Re: Daniel D. and Samantha D.**, 562 S.E. 2<sup>nd</sup> 147, (WV 2002).

This Honorable Court has also stated that parents who have intellectual incapacity resulting in inability to adequately care for their children should not have their rights terminated prior to social service systems determine if long term intensive services can allow the parent to properly function. **In re Billy Joe M.**, 206 W. Va. 1, 521 S.E.2d 173 (1999).

The Mercer County Circuit Court clearly found that the respondent mother has the limitations as discussed by this Honorable Court.

There is no question that the respondent has attempted to comply fully the family case plan. The lower court went on to find that her limitations prevent her from caring for her child without someone in the home to actually fulfill the role of parent. However, there have been no services with the mother and child in the

home to support this conclusion. Conflicting testimony was given as to what extent the respondent mother would need services and assistance to not only raise the child, but to protect her as well. This is exactly the type of case in which a dispositional improvement period would allow for intensive assistance to be monitored by the circuit court in order to properly assess whether or not the services will be sufficient to reunite the family.

The sole reason the circuit court cites in its Order for termination is the respondent mother's limitations. She has attempted to follow the family case plan, and has improved. The improvement period is just that, an improvement period, not a perfection period. The respondent will never be perfect, nor will any respondent; however, with the proper assistance, the respondent can be a parent to her child.

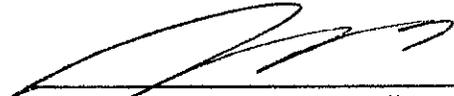
For the above stated reasons, counsel avers that the finding of the trial court was clearly erroneous based on the rulings of this court and the circumstances of the case at bar. The circuit court found that the respondent has attempted to comply with the family case plan, but her limitations prevent the completion of all elements thereof. With the proper assistance, through a dispositional improvement period, this respondent can reach a point where her child may be returned safely to the home.

**VII. CONCLUSION**

For the reasons stated above, the trial court should be reversed and the Petitioner's Motion for Dispositional Improvement Period should be granted, her parental, custodial and guardianship rights should not be terminated, or, in the alternative, this case should be remanded for further findings consistent with this prayer for relief.

Respectfully submitted this the 22<sup>nd</sup> day of October, 2008.

*MARTHA T.*  
By Counsel



---

Jason R. Grubb (Bar ID# 9559)  
PO Box 2056  
Beaver, WV 25813  
(304)763-5122

**CERTIFICATE OF SERVICE**

I, hereby certify that a true and exact copy of the foregoing has been mailed by U.S. Mail, postage prepaid to all interested parties as follows:

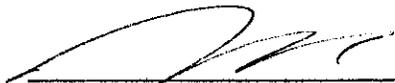
**Mercer County Prosecuting Attorney  
Counsel for WV DHHR  
120 Scott Street  
Princeton, WV 24740**

**Angela Alexander Ash, Esq.  
Assistant Attorney General  
200 Davis Street**

Princeton, WV 24740

**Janet Williamson, Esq.**  
**Guardian ad Litem**  
600 Rogers Street  
Princeton, WV 24740

This the 22<sup>nd</sup> day of October, 2008.



---

Jason R. Grubb (Bar ID# 9559)  
Counsel for Respondent below