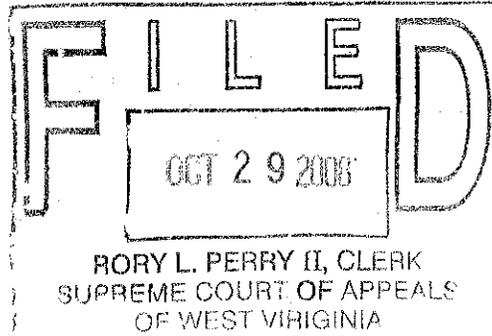


DOCKET NO. 34342

IN THE SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA

IN THE INTEREST OF:

MARANDA T. D.O.B.: 11-02-1999



APPELLEE'S BRIEF
ON BEHALF OF
MARANDA T.

Janet C. Williamson
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Princeton, WV 24740
West Virginia State Bar No. 4073
Guardian Ad Litem

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STATEMENT OF FACTS

On January 26, 2007, Alice Akers, a Mercer County Department of Health and Human Resources ("DHHR") Child Protective Service ("CPS") worker, went to Princeton Primary School to speak with Maranda concerning a referral made by Maranda's teacher. Ms. Akers reported that Maranda needed to tell her something. Maranda then turned around, pulled down her pants, bent over and spread her buttocks apart. Maranda stated she was tired of having her parents sleep and have sex in her bed in her presence. Maranda was age seven at that time.

During a January 26, 2007, home visit Maranda showed the DHHR worker a box containing syringes and stated that this is where the pills are kept.

On January 31, 2007, a forensic interview of Maranda was conducted by Shiloh Woodard. During the interview Maranda disclosed that her father Leonard T. touched her "thingy" and pointed to her vagina. Maranda also disclosed that her father abused alcohol and drugs. The DHHR workers and respondent mother entered into a safety plan on January 31, 2007, in which the mother agreed that "at no time will [respondent father] be allowed in the home with Maranda; that Maranda will not be left alone with [respondent father] at anytime;... failure to comply with this safety plan can result in court action and possible removal of your child."

After entering into the safety plan with respondent mother, Melanie Murphy, DHHR CPS worker, went to respondent mother's parents' home to where respondent mother and

Maranda had moved. The home was small and extremely cluttered; there was dirt and dust over everything. There were two men laying on the back bedroom bed with Maranda's maternal grandmother, watching TV. Determining that it was not an appropriate place for Maranda to live, DHHR requested that mother and Maranda relocate to the SAFE shelter in McDowell County. Maranda and her mother went to the SAFE shelter on February 2, 2007, but left the shelter on February 12, 2007, because Maranda got sick. Respondent mother and Maranda returned to respondent mother's parents' home.

By order entered March 7, 2007, a child abuse/neglect petition was filed alleging that Maranda was an abused and neglected child as a result of her parents' behavior.

At the adjudicatory hearing held April 6, 2007, Melanie Murphy and Alice Akers from DHHR testified regarding the above-mentioned January--February, 2007, events specifically including the sexual conduct. Additionally, both Ms. Murphy and Ms. Akers testified that there was only one bed in the home and that the father was always intoxicated.

Ms. Murphy testified that Maranda's mother, Martha T., and her father had relinquished rights to their other children.¹

Terry Hughes, Mercer County Board of Education Truancy Officer testified

¹ Upon information and belief respondent mother has had seven children. Respondent mother gave legal guardianship of her four oldest children to others after those children were removed by the state. Two children are deceased (one child died in a fire and another died from falling out of a truck bed while the driver was fleeing from police). CPS Initial Assessment and Safety Evaluation Worksheet and Conclusion, p. 5.

regarding Maranda's truancy. Maranda was absent without excuse 35 days and 20 days with excuse for a total of 55 days in a single school year.

Shiloh Woodard testified regarding the forensic interview of Maranda where she disclosed sexual abuse by her father and her parents having sex in her presence.

Respondent mother testified she had an eighth grade education and she was on probation for welfare fraud. She also testified, in direct contradiction to the DHHR workers, that there were two beds at their residence. She testified that she had been with Maranda's father for 26 years and that he didn't drink in front of their children. Respondent mother stated that she never made love in front of Maranda.

Respondent father testified while obviously intoxicated as noted by the circuit court judge. He testified, contrary to other testimony, that there were two bedrooms in their residence.

By order entered April 18, 2007, the circuit court found Maranda to be a neglected and abused child as a result of both respondent parents' actions. The Court ordered that respondent mother should have visitation but denied visitation for the father as he refused to be tested for drugs and/or alcohol.

On April 6, 2007, Maranda was placed in a specialized foster home because of her special needs. Maranda is developmentally delayed in several aspects. She is unable to read or write simple words. Once placed in foster care, it was determined that she needed eyeglasses. It was observed that Maranda has a tendency to pull her arms into her body and walk on her tip toes. She was unable or unwilling to dress herself when initially placed in foster care. Maranda would eat until she made herself sick. Although

most of these behaviors improved upon placement in foster care, Maranda remains developmentally delayed.

By order entered May 31, 2007, respondent mother was granted a six month post adjudicatory improvement period at a hearing on May 11, 2007.

On July 6, 2007, at a dispositional hearing for respondent father and review of respondent mother's post adjudicatory improvement period, respondent father's rights were terminated and the court set another review of respondent mother's post adjudicatory improvement period.

~~Supervised visitation continued twice a week with respondent mother.~~ During visitation, despite being counseled not to, respondent mother continued to bring large amounts of junk food and allow Maranda to eat all she wanted. Respondent mother did not take full advantage of her scheduled visits by leaving early or cancelling. Maranda's behavior continued to improve during foster care placement.

At the October 5, 2007, review of mother's post adjudicatory improvement, the guardian ad litem questioned whether reunification can be successful. The court extended respondent mother's post adjudicatory improvement.

At the review hearing held on December 21, 2007, it was revealed that Maranda had disclosed additional previous sexual conduct by her father and other relatives during times when her mother was present. Respondent mother continued to cooperate with services and her improvement period was allowed to continue. Maranda was scheduled to be tested for autism.

During a January 24, 2008, Multi-Disciplinary Treatment Team ("MDT) meeting, it was discussed that although respondent mother began psychological testing by Cherie Taylor on May 16, 2007, the written results were not available until 2008. Both Ms. Taylor, the psychologist, and Melanie Thompson, the Unity worker, who was teaching parenting and adult life skills to respondent mother, were concerned that respondent mother would have difficulty raising a special needs child and specifically that she would never be able to generalize the parenting skills taught her.

On February 1, 2008, a hearing was held on mother's post adjudicatory improvement review. The court acknowledged that the DHHR was seeking disposition and ordered the DHHR to continue to provide respondent mother with services until disposition.

On April 14, 2008, the circuit court heard the motion to terminate the rights of respondent mother.

At the dispositional hearing, Cherie Taylor, psychologist, testified regarding the testing of respondent mother. Respondent mother has a second grade reading level and they had to use the taped version of tests which took several months to complete. Respondent mother's total IQ was 50, her achievement IQ was 53. Ms. Taylor testified that respondent mother had limited insight regarding inappropriate behavior and setting boundaries for her child.

Also testifying was Melanie Thompson, the Unity worker who was teaching parenting and adult life skills to respondent mother. Ms. Thompson testified that she had been working with respondent mother since February, 2007. Ms. Thompson testified that

respondent mother's adult life skills had improved. However, respondent mother was not able to assimilate her parenting skills. While respondent mother was able to mimic specific behavior, she was not able to adapt that behavior to different situations. Respondent mother's parenting skills kept reverting backwards; she would be consistent for a couple of visits but then revert back. She testified that respondent mother had difficulty controlling Maranda depending on Maranda's mood. She testified that respondent mother understood that Maranda's father was a bad influence from the beginning of DHHR involvement.

Cristal Tabor, DHHR CPS worker, testified that in October, 2007, respondent mother came to her with a doctor's note suggesting someone stay with respondent mother in case of a medical emergency. Respondent mother wanted to know whether respondent father could come and stay with her. According to Ms. Tabor, this showed limited insight that presents a continuing danger to Maranda. It was Ms. Tabor's opinion that respondent mother can not make consistent improvement to properly care for Maranda.

Gail Murano, Children's Home Society caseworker, testified that she had supervised visits with Maranda and her mother since September, 2007. Ms. Murano attempted to improve respondent mother's assertiveness skills so she could play more of the mother role because Maranda tends to "run the roost" during visitation. Ms. Murano testified that respondent mother was not able to structure or be more assertive in disciplining Maranda. Respondent mother was not consistent with discipline. Ms. Murano testified about Maranda's undiagnosed developmental delays that were consistent with

an autism spectrum disorder: Maranda walks on tip toes, has no eye contact, understands only literal interpretation; does not relate to peers but relates more to adults or younger children; and constantly rocks.² Ms. Murano testified that respondent mother can not generalize from one situation to another. Under cross examination Ms. Murano testified that the type of long term services needed to permit safe reunification would be on a "24/7" basis and are not available.

Finally, respondent mother testified. She stated that Maranda does not have any limitation that needs to be addressed by a doctor. She related that the reason Maranda should not be around respondent father was because he was still drinking. She did not address or recognize the sexual abuse.

The court found that while respondent mother attempted to follow the family case plan, her limitations prevent her from improving to a point where she could care for Maranda. The court found that there is no reasonable likelihood that the conditions of neglect can be substantially corrected in the near future and it was necessary for Maranda's welfare to terminate the rights of respondent mother. Accordingly, the circuit court denied respondent mother's motion for a dispositional improvement period.

On August 28, 2008, Maranda was placed in an adoptive home with adoptive parents who have a long and successful history with foster and adoptive placements. Maranda quickly adjusted well. See **Exhibit A** (Report by Terri L. Farley, DHHR Adoption

² An April 28, 2008, report by Kenneth Norwood, M.D. diagnosed Maranda with: static encephalopathy; developmental coordination disorder; low IQ; adjustment disorder; and attachment disorder. According to Dr. Norwood, criteria for autism spectrum disorder was not met due to excellent eye contact and reciprocal social interactions. He noted difficulty diagnosing autism spectrum disorder in the presence of abuse and neglect history.

Specialist, dated September 30, 2008). At a September 30, 2008 MDT meeting, it was reported that since adoptive placement, Maranda has had one visitation with respondent mother after which she acted as if she was happy to return to the adoptive placement. The adoptive father reported that Maranda does not talk about respondent. He reported that, unlike some of his other childrens' experiences, there was no crying or asking about her mother after the visit.

CONCISE STATEMENT TO MEET THE ALLEGED ERRORS

The circuit court considered the mother's psychological/emotional limitations and concluded, based upon the clear and convincing evidence, that the mother would need somebody present in the home to actually fulfill the parental role and that a dispositional improvement period will not provide any added benefit not realized over the past fourteen months. The circuit court did not err by denying respondent mother's motion for dispositional improvement period and did not err by terminating respondent mother's rights. The circuit court's findings are not clearly erroneous. The circuit court's orders and ultimate disposition from which respondent mother appeals was not an abuse of discretion.

POINTS AND AUTHORITIES RELIED UPON

<i>In re Billy Joe M</i> , 206 W.Va. 1, 521 S.E.2d 173 (1999).....	12
<i>Burgess v. Porterfield</i> , 196 W. Va. 178, 469 S.E.2d 114 (1996).....	11
<i>In Interest of Carlita B.</i> , 185 W.Va. 613, 408 S.E.2d 365 (1991).....	13
<i>In re Charity H.</i> , 215 W.Va. 208, 599 S.E.2d 631 (2004).....	11

<i>In re Daniel D.</i> , 211 W.Va. 79 562 S.E.2d 147(2002).....	13
<i>In re Emily</i> , 208 W.Va. 325, 540 S.E.2d 542 (2000).....	14
<i>Napoleon S. v. Walker</i> , 217 W. Va. 254, 617 S.E.2d 801 (2005).....	11
<i>In re Samantha S. And Hope S.</i> , No. 33713 (filed 9-26-2008).....	11
<i>State v. Julie G.</i> , 201 W.Va. 764, 500 S.E.2d 877 (1997).....	13

STANDARD OF REVIEW

As this Court held in *In re Charity H.*, Syllabus Point 1, 215 W.Va. 208, 210, 599 S.E.2d 631, 633 (2004):

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 circuit court's account of the evidence is plausible in light of the record viewed in its entirety....[citations omitted]”.

And as this Court recently reiterated, a circuit court's final order and ultimate disposition is reviewed under an “abuse of discretion standard.” Challenges to findings of fact are reviewed under a clearly erroneous standard. Conclusions of law are reviewed *de novo*. Syl. pt. 2, *In re Samantha S. And Hope S.*, West Virginia Supreme Court of Appeals, No. 33713 (9-26-2008) citing syl. pt. 4, *Burgess v. Porterfield*, 196 W. Va. 178, 469 S.E.2d 114 (1996).” Syl. pt. 1, *Napoleon S. v. Walker*, 217 W. Va. 254, 617 S.E.2d 801 (2005).

DISCUSSION OF LAW

This Court held that

[w]here allegations of neglect are made against parents based on intellectual incapacity of such parent(s) and their consequent inability to adequately care for their children, termination of rights should occur only after the social services system makes a thorough effort to determine whether the parent(s) can adequately care for the children with intensive long-term assistance. In such case, however, the determination of whether the parents can function with such assistance should be made as soon as possible in order to maximize the child(ren)'s chances for a permanent placement.

In re Billy Joe M., syl. pt. 4, 206 W.Va. 1, 2, 521 S.E.2d 173, 174 (1999).

A determination whether the mother could adequately care for Maranda was made after intensive long-term assistance over fourteen months. The assistance included a psychological evaluation, adult life skills, and parenting skills. "Although parents have substantial rights that must be protected, the primary goal in cases involving abuse and neglect, as in all family law matters, must be the health and welfare of the children."

In re Billy Joe M. 206 W.Va. 1, 6, 521 S.E.2d 173, 178 (1999).

Maranda's mother only has a second grade reading level; her total IQ is 50 and her achievement IQ is 53. These limitations prevent respondent mother from setting appropriate and safe boundaries for Maranda. These limitations have already seriously harmed Maranda's welfare. For example, Maranda's mother exposed Maranda to sexual abuse. Maranda's mother allowed Maranda to live in a house where her father abused drugs and/or alcohol on a daily basis. Maranda's mother allowed Maranda to be absent from school 55 days in a year. Maranda's mother was not able to recognize that Maranda needed eyeglasses or evaluation for autism or other developmental delays. During her

improvement period, Maranda's mother did not take full advantage of visitation with Maranda. Maranda's mother did not recognize or address the sexual abuse of Maranda. The circuit court recognized that respondent mother's significant deficits, resulting in part from her low IQ, impairs her ability to parent and appropriately care for Maranda. The circuit court properly considered the evidence of respondent mother's initial progress, her plateau, and subsequent lack of progress. See syl. pt. 2, *State v. Julie G.*, 201 W.Va. 764, 765, 500 S.E.2d 877, 878 (1997) (involving a pre-adjudicatory improvement period).

The circuit court reviewed the performance of respondent mother's attempts to attain the goal of the improvement period and determined that respondent mother was unable to sufficiently improve to allow safe return of Maranda. *In Interest of Carlita B.* 185 W.Va. 613, 616, 408 S.E.2d 365, 368 (1991). By necessity, the circuit court considered the prior acts of sexual abuse, the substance abuse and truancy that respondent mother allowed and the court concluded that Maranda could never be safely returned to the care of respondent mother. *In Interest of Carlita B.* 185 W.Va. 613, 616, 408 S.E.2d 365, 368 (W.Va., 1991).

What more intensive assistance can courts order and monitor to safeguard Maranda's best interests? "Courts are not required to exhaust every speculative possibility of parental improvement before terminating parental rights where it appears that the welfare of the child will be seriously threatened...." *In re Daniel D.* 211 W.Va. 79, 83, 562 S.E.2d 147, 151 (2002). And, "[o]nce a court ... has made a determination upon sufficient proof that a child has been neglected and his natural parents were so derelict in their duties as to be unfit, the welfare of the infant is the polar star by which the discretion of the court is to be guided in making its award of legal custody. Syllabus point

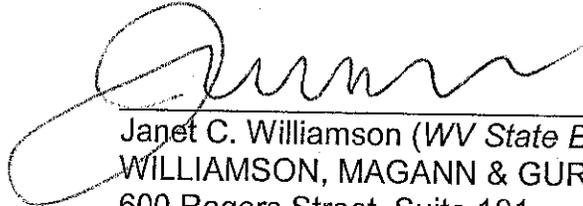
8, in part, *In re Willis*, 157 W.Va. 225, 207 S.E.2d 129 (1973)" *In re Emily*, syl. pt. 3, 208 W.Va 325, 328, 540 S.E.2d 542, 545 (W.Va. 2000).

It was in Maranda's best interest that her mother was denied a dispositional improvement period and that her parental rights were terminated. It is in Maranda's best interest to continue in her adoptive placement where she has been since August 28, 2008.

PRAYER FOR RELIEF

Wherefore, the guardian ad litem requests that this Court affirm the circuit court's decisions denying respondent mother's motion for dispositional improvement period and terminating the respondent mother's rights.

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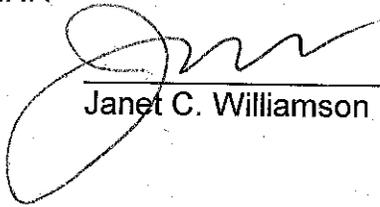
CERTIFICATE OF SERVICE

I, Janet C. Williamson, guardian ad litem for Maranda T., hereby certify that on the 28th day of October, 2008, I filed the original and nine copies of Appellee's Brief On Behalf of Maranda T. with Roy Perry, Clerk, West Virginia Supreme Court of Appeals, State Capital Room E-317, Charleston, WV 25304-0831, and sent copies by depositing same in the United States Mail, postage prepaid in an envelope addressed as follows:

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