NO. 34342

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

In Re: Maranda T.

APPELLEE'S BRIEF OF THE WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES

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I. KIND OF PROCEEDING AND NATURE OF RULINGS IN THE LOWER TRIBUNAL

On January 31, 2007, a safety plan was entered into by the respondent mother and the West Virginia Department of Health and Human Resources (hereinafter "DHHR") which was violated. DHHR filed a petition for abuse and neglect on March 7, 2007.

On April 18, 2007, Maranda was adjudicated an abused and neglected child and, on May 11, 2007, respondent mother was granted a post-adjudicatory improvement period.

On July 6, 2007, father's rights were terminated. On this date, respondent mother's improvement period continued, and then extended on October 5, 2007.

On April 14, 2008, a dispositional hearing took place on DHHR's Motion to Terminate Parental Rights of the respondent mother.

On April 14, 2008, the Court also denied respondent mother's Motion for a Dispositional Improvement Period and terminated parental rights of respondent mother.

It is from this Order that respondent mother appeals, and now DHHR responds.

II. STATEMENT OF FACTS

On January 26, 2007, a DHHR Child Protective Service (hereinafter "CPS") worker went to investigate a CPS referral of sexual abuse and substance abuse. Maranda, age 7, stated her parents sleep and have sex in her bed in her presence. On that same day, DHHR was also shown a box containing syringes and where 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 "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 the child."

After entering into the safety plan with respondent mother, it was determined that respondent mother's parents' home was not an appropriate place for Maranda to live. The house was dirty, cluttered and too small. DHHR requested that respondent mother and Maranda relocate to the SAFE shelter in McDowell County, which they did on February 2, 2007. However, they left the shelter on February 12, 2007, and 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 petition 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 also testified that respondent mother, Martha T., and the father had relinquished rights to their other children.

Terry Hughes, Mercer County Board of Education Truancy Officer, testified regarding Maranda's truancy. Maranda was absent a total of fifty-five (55) days in one school year, including thirty-five (35) unexcused absences.

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 that she had an eighth grade education and she was on probation for welfare fraud. She also denied all allegations made by DHHR.

Respondent father testified while obviously intoxicated, as noted by the Circuit Court Judge. He denied all allegations made by DHHR.

On 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. Most of her behavior improved upon placement in foster care, but Maranda remains developmentally delayed.

On May 11, 2007, respondent mother was granted a six month post-adjudicatory improvement period. 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. Respondent mother failed to listen to directives not to bring junk food. Respondent mother left early from scheduled visits or cancelled visits.

At the review hearing on October 5, 2007, the Court extended respondent mother's post-adjudicatory improvement period. At the review hearing held on December 21, 2007, it was revealed that Maranda had disclosed additional sexual conduct by her father and other relatives during times when her mother was present. However, 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 (hereinafter "MDT") meeting, it was discussed by both Cherie Taylor, the psychologist, and Melanie Thompson, the Unity worker, who was teaching parenting and adult life skills to respondent mother, the concern 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 respondent mother's post-adjudicatory improvement review. The Court ordered DHHR to continue to provide

respondent mother with services until disposition. DHHR filed a Motion to Terminate Parental Rights.

At the dispositional hearing on April 14, 2008, Cherie Taylor, psychologist, testified regarding the test results of respondent mother. Respondent mother has a second grade reading level, her total IQ was 50, and her achievement IQ was 53. Ms. Taylor testified that respondent mother had limited insight regarding inappropriate behavior and setting boundaries for her child.

Melanie Thompson, the Unity worker who was teaching parenting and adult life skills to respondent mother, testified that she had been working with respondent mother since February, 2007. Ms. Thompson testified that although mother's adult life skills had improved, respondent mother was not able to assimilate her parenting skills. Respondent mother was not able to adapt the parenting skills to different situations. She testified that respondent mother had difficulty controlling Maranda, and that respondent mother understood that Maranda's father was a bad influence.

Cristal Tabor, DHHR CPS worker, testified that in October, 2007, respondent mother suggested that the respondent father come and stay with her in case of an emergency. According to Ms. Tabor, this showed limited insight that posed a continuing danger to Maranda. It was Ms. Tabor's opinion that respondent mother cannot make consistent improvement to properly care for Maranda.

Gail Murano, Children's Home Society caseworker, testified that she had supervised the visits with Maranda and her mother since September, 2007. Ms. Murano testified that respondent mother was unable to be more assertive in the mother's role of structuring and disciplining Maranda. 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. Ms. Murano testified that respondent mother cannot assimilate 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.

Respondent mother testified denying sexual abuse and denying Maranda's special needs and limitations. She testified that alcohol was the basis for respondent father's denial of visitation.

The Court found that the respondent mother's limitations prevent her from improving to a point where she could care for Maranda. The Court also found no reasonable likelihood that the conditions of neglect can be substantially corrected in the near future and that it was necessary for Maranda's welfare to terminate the rights of respondent mother. The Circuit Court also denied respondent mother's motion for a dispositional improvement period.

III. STANDARD OF REVIEW

"Although conclusions of law reached by a circuit court are subject to de novo review, when an action, such as 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 circuit court's account of the evidence is plausible in light of the record viewed in its entirety." *In re: Tiffany Marie S., 196 W. Va. 223, 470 S.E.2d 177 (1996).*

IV. DISCUSSION OF LAW

DHHR agrees that the case of *Billy Joe M.*, 206 WVA 1, 2, 521 SE2d 173, 174 (1999) is controlling in the case at hand, as the respondent mother is intellectually incapacitated. Her total IQ is 50, achievement IQ is 53 and she only has a second grade reading level. The Court in *Billy Joe M.* states:

> "[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 this 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."

Billy Joe M., 521 SE2d 173, 174 (1999).

DHHR asserts that a thorough effort to determine whether this respondent mother could adequately care for her child with intensive, long-term assistance was made. Respondent mother underwent a determination as well as assistance fourteen (14) months, including a psychological evaluation, adult life skills and parenting skills.

After fourteen (14) months, it was determined that respondent mother would never be able to learn and assimilate the parenting skills taught to her.

The psychologist testified that respondent mother had limited insight regarding parenting. The Unity worker, after teaching and helping respondent mother for fourteen (14) months, testified that respondent mother could not adapt parenting skills to different situations and could not control her child.

Gail Murano, a CHS worker, repeated the Unity worker's testimony and opined that the long-term assistance needed to permit safe reunification would be on a "24/7" basis and is not available.

Clearly, a thorough effort was made over a fourteen (14) month period to determine respondent mother's capacity to adequately care for her child. The determination was made that the respondent mother could NOT adequately care for her child with intensive long-term assistance.

The Circuit Court correctly denied a dispositional improvement period and terminated parental rights based on sufficient proof of the respondent mother's incapacity to care for her child even with long-term assistance.

CONCLUSION

The Circuit Court of Mercer County correctly denied respondent mother's motion for improvement period and terminated her parental rights after DHHR's thorough effort over fourteen (14) months to determine that respondent mother could not adequately care for her child with intensive long-term assistance.

PRAYER FOR RELIEF

WHEREFORE, the DHHR requests this Court to affirm the Circuit Court's rulings denying respondent mother's motion for improvement period and terminating the respondent mother's parental rights.

Respectfully submitted,

West Virginia Department of Health
and Human Resources

By counsel

Darrell V. McGraw, Jr.
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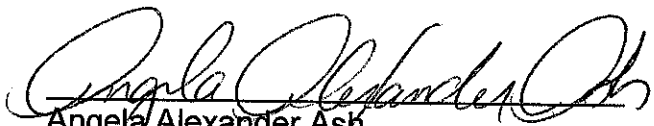

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CERTIFICATE OF SERVICE

I, Angela Alexander Ash, do hereby certify that on this 21st day of November, 2008, I served a true and accurate copy of **Appellee's Brief of the West Virginia Department of Health and Human Resources** on the following by first class mail, postage prepaid:

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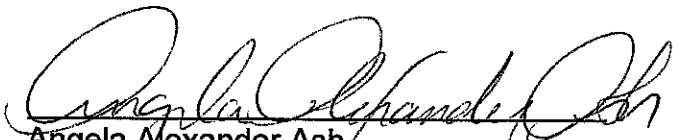

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