

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 34598

In the matter of: Caitlyn M., Carson M., and Steven M.
On appeal from the Circuit Court of Harrison County
Juvenile Petition Nos. 08-JA-12-3, 13-3, 14-3

In the matter of: Ryan Adric B.
On appeal from the Circuit Court of Harrison County
Juvenile Petition No. 07-JA-39-2

Appellee

AMICUS CURIAE BRIEF OF THE WEST VIRGINIA
BUREAU FOR CHILD SUPPORT ENFORCEMENT

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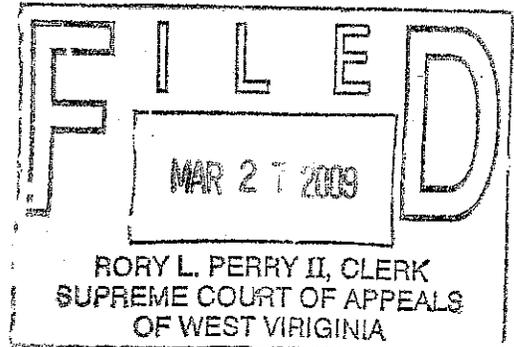


TABLE OF CONTENTS

Statement of Facts and Proceedings Below.....	3
Statement Regarding Alleged Errors.....	5
Standard of Review.....	5
Points and Authorities.....	6
The BCSE asserts that the circuit court has an obligation to establish child support to be paid by parents who have been involuntarily terminated or have voluntarily relinquished their parental rights. Such obligation should continue until the child has graduated from high school or has been adopted.....	7
Conclusion.....	19

NOW COMES the West Virginia Bureau for Child Support Enforcement, by and through its counsel, and files this Brief as Amicus Curiae pursuant to the West Virginia Rules of Appellate Procedure, Rule 19.

Statement of Facts and Proceedings Below

The above-named actions were consolidated due to the similarity of the issues presented to the Court. Although both cases were litigated in Harrison County, each was heard by a different Circuit Court Judge, resulting in contradicting decisions.

**In the matter of: Caitlyn M., Carson M., and Steven M.
On appeal from the Circuit Court of Harrison County
Juvenile Petition Nos. 08-JA-12-3, 13-3, 14-3**

An abuse and neglect petition was filed against the father, Stanley Ray M., based upon allegations of sexual abuse pertaining to the child, Caitlyn M. Necessarily, the petition included the other children, Carson M. and Steven M. The child's mother, Donna M., was named but no allegations of abuse were made against her.

On April 2, 2008, Stanley executed a "Voluntary Relinquishment of Parental Rights" regarding all three children. By Order of August 5, 2008, the Circuit Court found this document to be in the best interests of the child and accepted it. Accordingly, the Circuit Court terminated Stanley's parental rights to the three children and dismissed the action based upon the termination. However, the Circuit Court did order that the child support obligation previously established by the Family Court should continue.

No allegations of abuse were lodged against the mother, Donna. The children

have remained in her sole physical and legal custody.

Stanley filed the Petition for Appeal to this Court due to the continuation of the child support obligation despite his relinquishment.

In the matter of: Ryan Adric B.

**On appeal from the Circuit Court of Harrison County
Juvenile Petition No. 07-JA-39-2**

An abuse and neglect petition was filed against the father, William Matthew B., and the mother, Joanna F., alleging that the newborn infant, Ryan Adric B., was an abused and neglected child.

The mother, Joanna, entered into a stipulated adjudication, finding that the newborn infant was a neglected child and that Joanna was a neglectful mother due to her substance abuse. After she successfully completed treatment, the petition against Joanna was dismissed.

William executed a voluntary relinquishment of his parental rights on January 11, 2008. By Order of January 22, 2008, the Circuit Court terminated the parental rights of William. Joanna motioned the Circuit Court for child support to be paid by William. The Circuit Court awarded child support to Joanna for the period of time between the paternity determination and the relinquishment of his rights, from August 20, 2007, through January 11, 2008. The Circuit Court refused to grant child support through the majority of the child due to William's relinquishment.

Joanna filed a Petition for Appeal to this Court based on the denial of child support through the child's majority.

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." Syllabus point 1, *In re Tiffany Marie S.*, 196 W. Va. 223, 470 S.E.2d 177 (1996).

Statement Regarding Alleged Errors

The Bureau for Child Support Enforcement asserts that the Circuit Court failed to recognize the best interests of the child. The child support obligation owed by a relinquishing parent should continue through the majority or adoption of the minor child.

Points and Authorities

42 U.S.C. § 654

42 U.S.C. § 671

W. Va. R. of Proc. for Abuse and Neglect Proceedings, Rule 16a (2006)

W. Va. Code § 48-22-303 (2001)

W. Va. Code § 48-13-102 (2001)

W. Va. Code § 48-13-103 (2001)

W. Va. Code § 49-7-5 (2001)

W. Va. Code § 48-13-303 (2001)

W. Va. Code § 48-13-701 (2001)

W. Va. Code § 48A-6-6 (1999)

W. Va. Code 49-6-5 (1998)

W. Va. Code § 49-6-6 (1997)

W. Va. Code § 49-6-7 (1977)

Betty L.W. v. William E.W., 569 S.E.2d 77 (W. Va. 2002)

Carter v. Carter, 479 S.E.2d 681 (W. Va. 1996)

Cleo A.E. v Rickie Gene E., 438 S.E.2d 886 (W. Va. 1993)

G.M. v. R.G., 566 S.E.2d 887 (W. Va. 2002)

In re Carlita B., 408 S.E.2d 365 (W. Va. 1991)

In re Cesar L., 654 S.E.2d 373 (W. Va. 2007)

In re Stephen Tyler R., 584 S.E.2d 581 (W. Va. 2003)

Kimble v. Kimble, 341 S.E.2d 420 (W. Va. 1986)

Lauderback v. Wadsworth, 415 S.E.2d 62 (W. Va. 1992)

Michael K.T. v. Tina L.T., 387 S.E.2d 866 (W. Va. 1989)

Rebecca Lynn C. v. Michael Joseph B., 584 S.E.2d 600 (W. Va. 2003)

Runner v. Howell, 518 S.E.2d 363 (W. Va. 1999)

State ex rel David Allen B. v. Sommerville, 459 S.E.2d 363 (W. Va. 1995)

State ex rel DHHR v. Pentasuglia, 457 S.E.2d 644 (W. Va. 1995)

State ex rel Kimberly P. v. Michael George K., 531 S.E.2d 669 (W. Va. 2000)

State ex rel Roy Allen S. v. Stone, 474 S.E.2d 554 (W. Va. 1996)

William L. III v. Cindy E.L., 495 S.E.2d 866 (W. Va. 1997)

Wyatt v. Wyatt, 408 S.E.2d 51 (W. Va. 1991)

The BCSE asserts that the circuit court has an obligation to establish child support to be paid by parents who have been involuntarily terminated or have voluntarily relinquished their parental rights. Such obligation should continue until the child has graduated from high school or has been adopted.

The Court has steadfastly maintained the legal and moral obligation of a parent to support one's child from birth. *Wyatt v. Wyatt*, 408 S.E.2d 51 (W. Va. 1991); *Runner v. Howell*, 518 S.E.2d 363, 366 (W. Va. 1999). In its quest to protect the best interests of the child, the Court has held that "...child support payments are exclusively for the benefit and economic best interest of the child." *Carter v. Carter*, 479 S.E.2d 681 (W. Va. 1996) (*citations omitted*).

In the same vein, "a parent cannot waive or contract away the child's right to support." *Runner v. Howell*, quoting Syllabus Point 3, *Wyatt v. Wyatt*, *supra*. Despite

the parties' agreement to terminate the father's rights and obligation to pay child support, the Court has said such agreement is against public policy. *Runner*, 518 S.E.2d at 366; *Rebecca Lynn C. v. Michael Joseph B.*, 584 S.E.2d 600 (W. Va. 2003). Accordingly, it should follow that one parent cannot *unilaterally* terminate his support obligation, neither by executing a voluntary relinquishment of rights nor by being an abusive or neglectful parent warranting involuntary termination.

The West Virginia Legislature has codified these principles adopted by the Court. In West Virginia Code § 49-7-5 (2005), the circuit court is mandated to order the parent to pay support of the child if the parent is able to contribute said support. The child is unequivocally entitled to share in the same standard of living as the parents and support shall be set accordingly. W. Va. Code §§ 48-13-102, 48-13-103 (2008). The Legislature has confirmed that the child support guidelines shall be applied and be presumed to provide the correct amount of child support for the establishment or modification in all support cases, including foster care. W. Va. Code §§ 48-13-203, 48-13-701 (2008).

In further support of these principles, Rule 16a of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings specifically requires that, "Every order in an abuse and neglect proceeding that alters the custodial and decision-making responsibility for a child and/or commits the child to the custody of the Department of Health and Human Resources *must impose a support obligation* upon one or both parents for the support, maintenance and education of the child." (*emphasis added*) It is most important to note that this rule is mandatory and does not distinguish between dispositions. It simply states a support obligation must be imposed if the Court alters the custodial and decision-making responsibility for a child. In both cases at hand, a

significant change was made – termination.

In 2003, the Court was challenged to review this mandate regarding the establishment of a support obligation after termination of parental rights. Mr. R.'s rights to his son were involuntarily terminated. *In re Stephen Tyler R.*, 584 S.E.2d 581 (W. Va. 2003). *In re Stephen Tyler R.* was decided pursuant to then W. Va. Code § 49-6-5 (a)(6) (2001). At that time, the law read that a court may "...terminate the parental, custodial or guardianship rights and/or responsibilities of the abusing parent...." This Court interpreted that, "[t]he plain language of this statute affords the circuit court the options of either terminating the abusing parent's parental rights, terminating his/her responsibilities, or terminating both the parent's parental rights and responsibilities." *Stephen*, 584 S.E.2d at 596.

Because "responsibilities" had not been defined in the law, the inquiry became whether parental responsibilities referenced in W. Va. Code § 49-6-5 (a)(6) included the obligation of child support. *Id.* At that point, the Court went into the litany of cases which emphasize the duty of a parent to support the child, the intent of the Legislature to encourage and require the support of a parent, and that such failure to support carries criminal penalties. *Id.* at 596-598. Inevitably, the Court reached the conclusion that child support would definitely be included as a "responsibility" owed by a parent to a child under W. Va. Code § 49-6-5 (a)(6). Thus, the Court determined that, "[p]ursuant to the plain language of W. Va. Code § 49-6-5 (a)(6)(1998) (Repl. Vol. 2001), a circuit court may enter a dispositional order in an abuse and neglect case that simultaneously terminates a parent's parental rights while also requiring said parent to continue paying child support for the child(ren) subject thereto." *Id.*

Now, obligated parents like Stanley M. would propose to this Court that a reversal of the *Stephen* case is required due to the 2006 amendment of W. Va. Code § 49-6-5 (a)(6). At the decision of *Stephen*, West Virginia Code § 49-6-5 (a)(6) stated that the court could “terminate the parental, custodial or guardianship rights **and/or** responsibilities of the abusing parent...” Then, the Legislature amended this law to read “terminate the parental, custodial and guardianship rights **and** responsibilities of the abusing parent....” W. Va. Code § 49-6-5 (a)(6) (2007) (*emphasis added*)

Following that amendment, the Court decided *In re Cesar L.*, 654 S.E.2d 373 (W. Va. 2007). However, the language of the amendment was not a consideration discussed by the Court. The main issue of *Cesar* was “...whether a person who has voluntarily relinquished his/her parental rights retains his/her status as a ‘parent’ *for purposes of W. Va. Code § 49-6-6.*” *In re Cesar*, 654 S.E.2d at 380 (*emphasis added*). The mother, who previously executed a voluntary relinquishment, petitioned the circuit court to modify the child’s disposition to return the child to her custody. Because the Court answered that the mother was no longer a “parent,” it necessarily found that she no longer possessed the requisite standing to make the motion pursuant to W. Va. Code § 49-6-6.

When the DHHR countered that the Court’s decision to modify the disposition in *Stephen* would be inconsistent with its *Cesar* decision, the Court stated that was not accurate – “...that the modification of disposition permitted by the *Stephen* case was limited solely to a modification of child support.” *Cesar*, 654 S.E.2d at 383, n. 20. The *Cesar* Court seems to have differentiated between the child support issue of *Stephen* and the modification of disposition issue of *Cesar*.

This footnote indicates that this Court did not intend to reverse the ruling of *In re Stephen Tyler R.* The Court should recognize that such a reversal would likely cause an abundance of voluntary terminations, even if solely to avoid the support obligation. To rule that the terminated parent no longer has a support obligation would nullify many laws currently in effect which mandate the establishment of a support obligation.

This Court recognized the “Pandora’s box” that would be opened if a parent was given the right to terminate his child support obligation. *Runner*, 518 S.E.2d at 368. Specifically, the Court stated, “[w]ere parties permitted to relinquish parental rights without judicial investigation, a Pandora’s box would be opened, permitting coercive non-custodial parents to terminate their child support obligations without substantial involvement by the courts.” *Id.*

The case of *Rebecca Lynn C. v. Michael Joseph B.*, 584 S.E.2d 600 (W. Va. 2003), has reiterated the Court’s commitment to a parent’s obligation to support the child, again affirming the rulings in *Runner*, *Wyatt*, and *Carter*. The parties entered into an agreement terminating Mr. B.’s past, present, and future child support obligation and parental rights. No adoption was contemplated. The parties presented an order to the circuit court which was entered, approving and incorporating the parties’ agreement. Later, Ms. C. requested that a future child support obligation be paid by Mr. B.

The lower court denied her request and this appeal ensued. Furthermore, the Court affirmed that the public policy of this State forbids the waiver and termination of parental support obligations for a minor child. In its decision, this Court restated that the support obligation is a right of the child.

Federal law requires the State to have mechanisms to provide support for children who receive foster care maintenance payments. 42 U.S.C. §§ 654, 671 (2008). Hence, the inclusion of provisions for payment of support in State law regarding foster care cases. *Supra*. Clearly, a parent who voluntarily relinquishes his rights should not be relieved of the responsibility to support that child.

This Court has taken a firm stand on the support obligation when a parent has consented to voluntarily relinquish his parental rights for adoption. The case of *Kimble v. Kimble*, 341 S.E.2d 420 (W. Va. 1986), involved the father's execution of a consent for adoption. Because the father believed this relieved his child support obligation, Mr. Kimble stopped paying his support. After several years lapsed, Mr. Kimble became aware that the adoption had never happened when the mother sought enforcement of the past child support obligation. The Court held that the decretal support obligation cannot be suspended, modified, or terminated by an agreement, although certain facts may invoke equitable estoppel in such situations. Syllabus Point 2, *Kimble v. Kimble*, *supra*. *Kimble* was then remanded for a determination of why the adoption was not consummated, whether the father relied to his detriment, and whether the welfare of the child would be adversely affected if the father were released from his future or past obligation.

Adoption law clearly states that only the actual adoption will forever terminate all parental rights and all parental obligations. W. Va. Code § 48-22-303 (a)(9), (10) (2001). Further, the termination of parental rights and obligations pursuant to an adoption is permanent even if visitation or communication with the child is performed. W. Va. Code § 48-22-303 (a)(11) (2001). This makes perfect sense in the fact that the

adoptive parent is replacing the biological parent, legally and physically. However, the obligations of the biological parent will continue until the adoption of the child regardless of the execution of a valid relinquishment or consent to adoption. W. Va. Code § 48-22-303 (a)(10) (2001). To do otherwise would deprive the child, which is against public policy.

Plainly, a parent will not be relieved of parental obligations until the adoptive parent steps into the shoes of the parent. Accordingly, any parent who voluntarily relinquishes or is involuntarily terminated should continue to provide support for his child until the child is adopted or becomes emancipated.

The *Runner* Court held that “[s]ome evidence must be taken to determine the child’s best interests when the question of termination of parental rights is posited, especially in cases where it appears the primary reason for the termination is to cease the payment of child support.” *Runner*, 518 S.E.2d at 368. The BCSE would propose to this Court that, at a minimum, the child’s best interests must be considered before terminating the support obligation, whether the parental rights have been involuntarily terminated or voluntarily relinquished by a parent.

The Court’s role is to protect the welfare and interest of minor children. *Lauderback v. Wadsworth*, 415 S.E.2d 62, 65 (W. Va. 1992); Syl. Pt. 3, *In re Katie S.*, 479 S.E.2d 589 (W. Va. 1996). For this reason, abuse and neglect proceedings are “...among the highest priority for the courts’ attention.” Syl. pt. 1, in part, *In re Carlita B.*, 408 S.E.2d 365 (W. Va. 1991). However, the Circuit Court seems to have lost sight of

its "polar star" regarding Ryan Adric B.¹ The decision of the Circuit Court regarding Ryan Adric B. indeed opens the "Pandora's box" discussed in *Runner*.

In the absence of an adoption, voluntary termination or relinquishment by a biological parent will leave a child forever motherless or fatherless. In the context of paternity proceedings, the Court has mandated strict guidelines for reviewing the best interests of the child before disestablishing a father. *Michael K.T. v. Tina L.T.*, 387 S.E.2d 866 (W. Va. 1989).²

The Court requires more than biological proof of paternity to determine or terminate the legal responsibility for the support of a child.³ Thus, this Court has only allowed disproving paternity in very limited circumstances. Always, specific findings must be made by the Court.

In the interest of protecting the child, the Court has consistently applied the "best interest" methodology to any case where a court's ruling could result in bastardizing a child. *Cleo A.E. v. Rickie Gene E.*, 438 S.E.2d 886, 889 (W. Va. 1993). The Court has

¹ See *Michael K.T. v Tina L.T.*, 387 S.E.2d 866, 872 (W. Va. 1989).

² In *Michael K.T.*, the Court enumerated the following factors for consideration: (1) the length of time following when the putative father first was placed on notice that he might be the biological father before he acts to contest paternity; (2) the length of time during which the individual desiring to challenge paternity assumed the role of father to the child; (3) the facts surrounding the putative father's discovery of nonpaternity; (4) the nature of the father/child relationship; (5) the age of the child; (6) the harm which may result to the child if paternity were successfully disproved; (7) the extent to which the passage of time reduces the chances of establishing paternity and a child support obligation in favor of the child; and (8) all other factors which may affect the equities involved in the potential disruption of the parent/child relationship or the chances of undeniable harm to the child. *Michael K.T.*, 382 S.E.2d at 872.

³ Historically, the Court has emphasized that "the preeminent factor in deciding whether to grant or deny blood testing is the child's best interests." *State ex rel Roy Allen S. v. Stone*, 474 S.E.2d 554, 568 (W. Va. 1996). The court must determine whether the equities of the particular situation would warrant the admission of genetic test results and its effect upon the child. *Michael K.T.*, 387 S.E.2d at 872, 873.

made it clear that a father disputing paternity carries the significant burden to prove that no undeniable harm will come to the child if paternity is disproved. *See State ex rel Kimberly P. v. Michael George K.*, 531 S.E.2d 669, 676 (W. Va. 2000). In some situations, the Court has clearly established that the law must favor the child over the father. *Michael K.T.*, 387 S.E.2d at 872, citing *Commonwealth ex rel. Gonzalez v. Andreas*, 245 Pa. Super 307, 369 A.2d 416 (1976); *William L., III, v. Cindy E. L.*, 495 S.E.2d 866 (W. Va. 1997).

When a man has admitted to being the father and held himself out to be the father of a non-marital child, the Court affirmed the paternity in the face of the maternal grandparent's challenge of the man's paternity.⁴ *State ex rel David Allen B. v. Sommerville*, 459 S.E.2d 363 (W. Va. 1995). By the same standard, the Court found undeniable harm would result to disestablish paternity of a four-year-old child because the husband, as the presumed father, had held himself out as the child's father for such a long period of time.⁵ *William L., III, v. Cindy E. L.*, *supra*.

The Court has also refused to automatically void a paternity acknowledgment executed by a man although genetic test results later excluded him. Even if fraud or duress in the execution of a paternity affidavit is proven, the Court's decision to void an acknowledgment must "...be made only after consideration of all applicable preferences, presumptions, and equitable principles established in our paternity jurisprudence, *with*

⁴ The Court also added that, if the case had occurred in the reverse scenario - where the father wanted to *dispute* paternity after acknowledging by an answer and holding himself out to be the father of the child - then David Allen B. would probably not be permitted to introduce blood test results to dispute paternity. *Id.* at 366.

⁵The Court noted no guardian ad litem was appointed for the child, and reiterated the position of *Cleo A.E.* that a guardian should be appointed in paternity disputes. *William E.L.*, 495 S.E.2d at 839, n. 6.

the best interests of the child being a paramount consideration." *Kimberly P.*, 531 S.E.2d at 676-677 (*emphasis added*); *see also G.M. v. R.G.*, 566 S.E.2d 887 (W. Va. 2002).

In these situations, it is apparent that the interests of the mother and child often differ, creating the potential for conflict with the child's fundamental rights. *State ex rel DHHR v. Pentasuglia*, 457 S.E.2d 644, 647 (W. Va. 1995), quoting *Commonwealth, Dep't of Social Serv. v. Johnson*, 376 S.E.2d 787, 791 (Va. App. 1989). In *Pentasuglia*, the Court observed the "present trend in courts throughout the country is to give greater recognition to the rights of children, including their right to independent representation in proceedings affecting substantial rights." *Id.* at 648.⁶

Kimberly P. was a good example. The Court would not allow the actions of the mother to be attributed to her child's detriment, especially not to free a father from the duty of support. *Kimberly P.*, 531 S.E.2d at 678. When the mother divorced the child's biological father, the divorce order stated that no children were born of the marriage. Then, based on the timely petition of the mother's boyfriend, the court rescinded the paternity acknowledgement executed by him. Despite these two court orders creating a fatherless child, this Court found that the child would not be bastardized and deprived of support due to the mother's actions. Ultimately, the biological father was held responsible for the support of the child.

In a similar but reverse situation, the husband was listed on the child's birth certificate. Because the biological father (mother's boyfriend) wanted paternity to be

⁶*See also Betty L.W. v. William E.W.*, 569 S.E.2d 77 (W. Va. 2002).

established, he was burdened to prove that he had a substantial parent/child relationship sufficient to create a liberty interest. *State ex rel Roy Allen S. v. Stone*, 474 S.E.2d 554 (1996). Despite the successful establishment of the biological father's liberty interest, the Court continued its evaluation to further consider the impact upon the existing family and the existing parent/child relationship between the husband and the child.⁷ *Id.* at 565-566. Based on the child's best interest, the Court held that the biological father could be deprived of his liberty interest if the biological father's intrusion "...would cause undue disruption and, thus, jeopardize the child's proper development." *Id.* at 567.

As the Court has explained in many of its cases, the rights of the biological father are often subordinate to the best interests of the child. In *all* disputations of paternity, the Court has evaluated such cases for the best interests of the child. *See Roy Allen S.*, 474 S.E.2d at 566; *Michael K.T.*, 387 S.E.2d at 872; *Kimberly P.*, 531 S.E.2d at 676. The standard for permanently terminating a parent's support obligation should be no less stringent.

The *Cleo* Court reinforced the appointment of a guardian ad litem, recognizing the child's right to independent representation when her rights could be affected. *Cleo A.E. v. Rickie Gene E.*, 438 S.E.2d 886, 889 (W. Va. 1993). When paternity is disproved in civil proceedings, the guardian ad litem has the duty to ensure that a paternity and child support action against the true biological father is expeditiously pursued. *Id.* at 890.

⁷ The Court should consider age, emotional maturity and wishes of the child, personalities of all parties affected, history, prior opportunities to raise the issue of paternity and any other relevant matter that may affect the best interest of the child. *Roy Allen S.*, 474 S.E.2d at 567.

Although the child of an abuse proceeding is always represented by counsel, courts are allowing the terminated, abusing or neglectful parent to effectively steal a child's right to support. The child's counsel cannot seek the "next" father. Conversely, in the face of adversity, the child's biological father can simply decide to stop being the father and relinquish his rights. Although the termination of a personal relationship with the father may be in the best interests of the child, the termination of the financial support for the child is not normally in the best interests of the child. Such is the reasoning in *Cleo* by directing the guardian ad litem to proceed to the "next father." Clearly, the Court has shown that it is against public policy to cease the child's financial support and impose the burden upon the State or the sole parent. *See also* 42 U.S.C. §§ 654, 671.

Akin to the liberty interest in *Roy Allen S.*, the terminated parent could be given the burden to prove that no harm will result to the child from the lack of support. Whether by abuse, neglect, or choice, the termination of parental rights should not be the determining factor that ends the legal duty of the parent to support his/her child. *See State ex rel. Kimberly P. v. Michael George K., supra.* Furthermore, by permitting the withdrawal of financial support by the parent through relinquishment, the Court would be attributing the actions of the terminated parent to the detriment of the child. This Court has affirmed that, in certain circumstances, **the law must place an innocent child above the presumed father.** *William L., III, v. Cindy E. L., supra* (citation omitted, emphasis added). Likewise, in abuse and neglect proceedings, the innocent child's right to support should be favored over the rights of an abusive or neglectful parent.

Conclusion

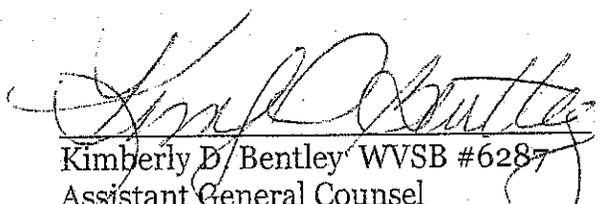
Just as the Court reasoned in *Kimberly P.* that the mother's actions wouldn't be attributed to an innocent child to free a father from the duty of support, the Circuit Court's acquiescence in the voluntary relinquishment of parental rights likewise should not be attributed to terminate the support for the child. While the law cannot force a parent to be a "good" parent, it can involuntarily collect the support owed to the child. The parent's act of abuse or neglect of the child should not be rewarded by permitting the court to withhold support and further harm the child.

In *Cleo A.E.*, the Court ruled that the rights of the child must be protected by a guardian ad litem whenever a ruling would bastardize a child. *Cleo A.E.*, 438 S.E.2d at 889. The Court did not limit or exclude any child from that right, whether paternity was established by presumption, acknowledgment or court order. A child of abuse and neglect is yet another child in need of the Court's protection. As the Court has consistently stated that the best interests of the child are the paramount concern, it has also held that the child's rights may override the parent's rights. See *Michael K.T.*, 387 S.E.2d at 872; *Kimberly P.*, 531 S.E.2d at 676; *Roy Allen S.*, 474 S.E.2d at 566.

The Court is losing sight of its "polar star" if it creates law granting preference to the rights of the unscrupulous parent, without considering the rights of the child. If the child's interests are ignored, many parents may attempt to relinquish his/her rights and obligations. Worse yet, the parent who loathes the support obligation may take abusive action toward the child, hoping for the opportunity to relinquish his parental rights and the responsibility to pay support! Unfortunately, this Court is well aware of individuals

who have committed heinous acts for much lesser causes. The Court would be opening a "Pandora's box" to allow such a travesty upon the abused and neglected children of West Virginia. The support obligation for the abused or neglected child must be continued in the face of acts warranting termination, whether involuntary or by voluntary relinquishment. No benefit should be given for the hurtful acts of a parent to his or her child.

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CERTIFICATE OF SERVICE

I, Kimberly D. Bentley, Assistant General Counsel, for the State of West Virginia Department of Health and Human Resources, Bureau for Child Support Enforcement, do hereby certify that a true copy of the hereto **MOTION** and **AMICUS CURIAE BRIEF OF THE WEST VIRGINIA BUREAU FOR CHILD SUPPORT ENFORCEMENT** was duly serviced upon the parties by delivering a true and correct copy of the same to them by **REGULAR FIRST CLASS MAIL**, postage prepaid, on this 25TH day of March 2009, to the following addresses:

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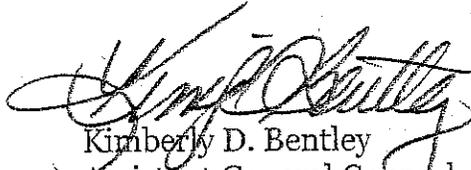
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