

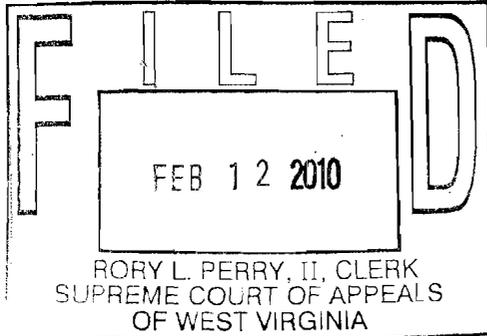
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NO. 35307

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

IN RE: NELSON B.

**BRIEF ON BEHALF OF APPELLEE, STATE OF WEST VIRGINIA,
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**



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Dated: February 11, 2010

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

**I. KIND OF PROCEEDING AND NATURE OF RULING IN THE
LOWER TRIBUNAL 1**

II. STATEMENT OF FACTS 1

III. STANDARD OF REVIEW 4

IV. ARGUMENT 5

V. CONCLUSION 11

VI. CERTIFICATE OF SERVICE 12

TABLE OF AUTHORITIES

Statutes:

W. Va. Code § 49-6-5(a)(5) (Repl. Vol. 2009)	1
W. Va. Code § 49-6-5(a)(3) (Repl. Vol. 2009)	6
W. Va. Code § 49-6-5(a)(6) (Repl. Vol. 2009)	10

Cases:

<u>In re Emily</u> , 208 W. Va. 325, 540 S.E.2d 542 (2000)	4-5
<u>In re Tiffany Marie S.</u> , 196 W. Va. 223, 470 S.E.2d 177 (1996)	5
<u>In re Travis W.</u> , 206 W. Va. 478, 525 S.E.2d 669 (1999)	5
<u>In re Elizabeth Jo Beth H.</u> , 192 W. Va. 656, 453 S.E.2d 639 (1994)	5
<u>In re Brian D.</u> , 194 W. Va. 623, 461 S.E.2d 129 (1995)	9

I. KIND OF PROCEEDING AND NATURE OF RULING IN LOWER TRIBUNAL

This matter constitutes an appeal by Paul B., Respondent father below, from the "Order Following Disposition Hearing" entered on May 15, 2009 by the Circuit Court of Preston County, West Virginia. Said Order resulted from the disposition hearing held below on February 19, 2009. Pursuant to West Virginia Code § 49-6-5(a)(5) [Disposition No. 5], the Circuit Court found that the Respondent father was presently unable to provide adequately for the needs of his child, Nelson B., and ordered the child placed in the custody of his maternal aunt and uncle, Patricia B. and Joseph B. Legal custody of the child was ordered to continue with the West Virginia Department of Health and Human Resources ("Department" or "DHHR") until such time as an order conferring permanent legal guardianship of the child upon the aunt and uncle is entered.¹

II. STATEMENT OF FACTS

The Department does not dispute the facts as stated in the *Brief on Behalf of Appellant, Paul Eugene B., In Support of Petition for Appeal* (see, pp. 2-4), filed previously herein by Chaelyn W. Casteel, Esq., on behalf of the Appellant. The Department would further join, adopt and incorporate herein by reference the statement of facts as set forth in the *Brief in Opposition to Petition for Appeal on Behalf of Nelson B. by His Guardian Ad Litem* (see, pp. 2-11) filed previously herein by Natalie J. Sal, Esq.

The Department would further assert that the Findings of Fact and Conclusions of Law set forth in the aforesaid May 15, 2009 Order Following Disposition Hearing

¹ The Circuit Court has not entered an order conferring legal guardianship of the child upon Patricia B. and Joseph B. at this time due to the pendency of the instant appeal by Paul B.

accurately and correctly depict the pertinent facts upon which the Circuit Court's ultimate ruling is based.

It should be noted that the Appellant's parental rights were not terminated below in this child abuse and neglect proceeding. In fact, the Order being appealed herein by Paul B. is replete with references to the Circuit Court's acknowledgment of the father's efforts in attempting to remedy the conditions of abuse and neglect, but to no avail due largely to his ongoing battle with mental health issues. The following excerpts are a sampling of the Circuit Court's analysis:

. . . That Paul Eugene [B.] has been represented by counsel and GAL;

. . . That the Court recognizes that Paul [B.] has done a good job of trying to improve, that he loves his son, that he wants to take care of his son, that he wants to be a father to his son, and that he has made a bona fide good faith effort to try and remedy the conditions of abuse and/or neglect in this matter;

. . . That Paul [B.] has been diagnosed with bi-polar disorder and has mental health issues;

. . . That neither mental health nor economic issues were solely controlling in this case, but the Court must consider the best interests of the child;

. . . That Paul [B.] has suffered hallucinations and has had suicidal and homicidal thoughts;

. . . That the Court is concerned as to what happens to the child when the Respondent Father has an episode because there is no phone, the electric is in jeopardy, and the home is not appropriate for a six-year old child;

... That the Respondent Father has had four in-patient admissions for mental health treatment since May of 2008, three of which occurred during the improvement period , involving one one-day stay and two seven-day stays;

... That each in-patient hospital admission was voluntary;

... That the Respondent Father is receiving services at Valley Healthcare which include psychological therapy, psychiatric care, transport, and case management;

... That the evidence as a whole shows that Paul [B.] is unable to adequately care for his six year old son;

... That for Nelson [B.] to reside in the home of Respondent Paul [B.] is contrary to the best interest of the child because of Paul [B.'s] mental health issues, the condition of the home, and fear that Paul [B.] would inadvertently harm the child while suffering from an exacerbation of his mental health conditions;

... [That] Despite the best efforts of Paul [B.], WVDHHR, and the members of the MDT, Respondent Paul [B.] is presently unable to provide adequately for the child's needs.

May 15, 2009, Order Following Disposition Hearing, pp. 2-4.

Though the Circuit Court placed the child in the permanent custody of Patricia B. and Joseph B., the Court also concluded:

The Court is not terminating parental rights, and is further issuing this order without prejudice so as to permit Respondent Paul [B.] to later file a petition with this Court seeking return of custody of Nelson [B.] if the circumstances are appropriate for the same. . . Visitation between the child and Respondent Paul [B.] shall continue at least two times per week, and may be supervised by the [maternal aunt and uncle] or any other responsible adult approved by the [maternal aunt and uncle]. Telephone calls shall be permitted daily, until and unless a separate long-term

visitation schedule is implemented in this matter. . . As the child gets older, the parties should attempt to increase the contact between the child and Respondent Paul [B.], and shall permit unsupervised visitation when the same becomes safe and appropriate given the child's age and the mental health status of Paul [B.].

Id., p 6.

Ultimately, the Circuit Court found (and the MDT agreed) that the Department had made reasonable efforts to prevent removal of the child from the home, care and custody of Paul B. Reasonable efforts were made throughout the duration of this case (and prior to) in the form of an extensive array of services implemented on behalf of Paul B. Unfortunately, the father did not prove capable of providing adequately for the child's needs and safety.

III. STANDARD OF REVIEW

"For appeals resulting from abuse and neglect proceedings . . . we employ a compound standard of review: conclusions of law are subject to *de novo* review, while findings of fact are weighed against a clearly erroneous standard." In re Emily, 208 W. Va. 325, 332, 540 S.E.2d 542, 549 (2000).

"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 a circuit court's account of the evidence is plausible in light of the record viewed in its entirety." Syl. Pt. 1, In re Tiffany Marie S., 196 W. Va. 223, 470 S.E.2d 177 (1996).

"In the context of abuse and neglect proceedings, the circuit court is the entity charged with weighing the credibility of witnesses and rendering findings of fact. Syl. Pt. 1, in part, In re Travis W., 206 W. Va. 478, 525 S.E.2d 669 (1999). . . This Court, therefore, cannot set aside a circuit court's factual determinations unless such findings are clearly erroneous." In re Emily, *supra*.

"Consistent with our cases in other areas, we give appropriate deference to the findings of the circuit court. In this regard, the circuit court has a superior sense of what actually transpired during an incident, by virtue of its ability to see and hear the witnesses who have firsthand knowledge of the events. Appellate oversight is therefore deferential, and we should review the circuit court's findings of fact following an evidentiary hearing under the clearly erroneous standard. If the circuit court makes no findings or applies the wrong legal standard, however, no deference attaches to such an application. Of course, if the circuit court's findings of fact are not clearly erroneous and the correct legal standard is applied, the circuit court's ultimate ruling will be affirmed as a matter of law." In re Elizabeth Jo Beth H., 192 W. Va. 656, 453 S.E.2d 639 (1994).

IV. ARGUMENT

The assignment of error prescribed by the Appellant herein provides that the Circuit Court "erred in transferring guardianship of the minor child to the maternal aunt and uncle because there was a less drastic alternative available" for disposition. The

less drastic alternative offered by the Appellant is the disposition alternative stated in West Virginia Code § 49-6-5(a)(3) [Disposition No. 3], which provides for a return of the child to his home “under the supervision of the Department.” W.Va. Code § 49-6-5(a)(3) (Repl. Vol. 2009).

Contrary to the Appellant’s assertions, Disposition No. 3 had already been attempted by the Court, the MDT and the Department, to no avail in the underlying proceeding. After the death of the child’s mother in 2005, Patricia B. and Joseph B. aided in providing both Paul B. and Nelson B. a place to live and helped raise the child. Subsequently, Paul B. attempted to parent the child on his own which resulted in circumstances leading to ongoing referrals to the Department. In June 2007 the Department filed an imminent danger petition against Paul B. alleging, *inter alia*, that Nelson B. (then four years of age) had been subjected to emotional, psychological, and physical abuse and neglect by his father based upon a history of alcohol abuse, mental health problems, and irrational behavior. The petition also noted that Paul B. had been hospitalized on several occasions for suicidal ideations, and that the Department was providing safety services in the home at that time. The Department had also earlier in 2007 facilitated two (2) months of adult life skills training and case management services on behalf of the Appellant. Though the petition was dismissed the Department continued to initiate intensive services through Valley HealthCare Systems to address ongoing mental health and neglect issues which had precipitated the filing of the petition.

Events occurring on May 21, 2008 resulted in the filing of an additional imminent danger petition by the Department against Paul B. A deputy sheriff had been called to

investigate an alleged break-in reported by Paul B. Upon arriving at the Appellant's home, the deputy discovered Paul B. who was having hallucinations.² Paul B. entered the crisis unit of Valley HealthCare Systems that evening leaving no one to care for or assume custody of the child. Nelson B. was placed with his maternal aunt and uncle, Patricia B. and Joseph B. A preliminary hearing was held on June 10, 2008 wherein the Circuit Court found that imminent danger did exist, that legal custody of Nelson B. should remain with the Department and physical placement should remain with Patricia B. and Joseph B. On the instant petition, the Circuit Court also appointed both counsel and a guardian ad litem to represent Paul B.

The Appellant entered into a stipulated adjudication and filed a motion for post-adjudicatory improvement period on July 17, 2008. All parties to the MDT, including the Department and CASA, concurred with the stipulated adjudication and granting of the improvement period. Accordingly, the following exhibits set forth and describe in detail the progression of extensive services, resources and efforts that were put in place in this matter to provide Paul B. an opportunity to remedy the conditions of neglect resulting in imminent danger to his child:

Exhibit A – Family Case Plan (August 4, 2008);

Exhibit B – Family Case Plan Review (September 29, 2008);

Exhibit C – Child's Case Plan Review (November 20, 2008);

Exhibit D – Child's Case Plan (January 5, 2009);

Exhibit E – Addendum to Child's Case Plan (February 12, 2009);

Exhibit F – Court Report (May 8, 2009); and

² A Chapter 27, Article 5 involuntary commitment hearing was held on May 21, 2009 resulting in Paul B.'s placement at the crisis unit at Valley HealthCare Systems.

Exhibit G – Visitation Schedule (June 2, 2009).

All of the above exhibits³ are attached hereto, and made a part hereof. Exhibits F and G also explain the significant efforts made by the MDT to facilitate opportunity for meaningful visitation between Paul B. and Nelson B.

A thorough review of these exhibits clearly establishes that an honest attempt at a Disposition No. 3 (return of the child to Paul B. under supervision of the Department) has already been made by the Circuit Court and the MDT. In short, this attempt through the Appellant's improvement period has abundantly proven that Paul B. currently cannot provide adequate care and safety for his six year old son. This remains the case despite intensive and continued safety, parenting, daily living/adult life skills, employment and money management services and the like provided to Paul B. by Home Base, Inc., months of individualized counseling/therapy, psychiatric services, and case management provided by Valley HealthCare Systems, and strict oversight by the MDT and the Department.

An additional problem identified by the case plans was that Paul B. had no steady income to maintain a home for the child. Though he did receive services to assist him in finding employment, it appears that the father's mental health issues also interfered with his ability to acquire a job. He also applied for and was denied a Social Security Disability.

The Appellant's mental health issues and episodes are discussed in the following excerpt from the Child's Case Plan dated January 5, 2009:

MDT's have been held in this case on 6/10/08, 6/25/08, 8/14/08, 9/24/08, 10 20/08, 11/20/08 and 12/16/08. Paul has admitted that he has some mental health issues that impair his ability to parent his son, Nelson. To

³ All of the exhibits listed are part of the court record.

date, Paul has complied with parenting and adult life skills services provided by Bill Hale of Home Base, Inc. To the knowledge of the DHHR, Paul has complied with receiving treatment from Valley HealthCare, Inc. and has been taking his medications. He has, however, been admitted to the Crisis Unit at Valley HealthCare on one occasion and to Chestnut Ridge Hospital on one occasion in the past 2 months. The admission to the CRU at Valley was 11/20/08 and he remained there for 5 days. The admission to Chestnut Ridge occurred several days before Christmas and Paul signed himself out AMA [against medical advice] the following day. At this point, Paul has checked into the Crisis Unit at Valley HealthCare so many times, Medicaid will not pay for his admission there anymore. This is the reason that, before Christmas, Paul was admitted to Chestnut Ridge Hospital rather than [sic] Valley HealthCare. Paul has stated to Bill Hale and to Melissa McCabe [CPS Worker] several times that he refuses to stay at Chestnut Ridge no matter what. It is concerning to the Department that if Paul were to need mental health assistance, that he would refuse to stay at Chestnut Ridge to obtain that assistance. Some mental health records were recently received by the Department from Valley HealthCare. In a case management progress note dated 12/15/08, Paul stated to his service coordinator that he was experiencing "visual hallucinations" in the form of a dark cloud and audio hallucinations in the form of his deceased wife "yelling at him". These statements are of particular concern to the Department as they seem to be evidence that Paul is not in an adequate frame of mind to care for a child.

Exhibit D, pp. 1-2. The best interest of the child is the polar star by which all matters affecting children must be guided. See, Syllabus Point 7, In re Brian D., 194 W.Va. 623, 461 S.E.2d 129 (1995). The Circuit Court correctly recognized and held that the best interest of Nelson B. could not be promoted or secured by permitting him to remain in the care, custody and/or control of his father, in spite of an extended installation of services and oversight. In hindsight, it appears not only that the Circuit Court's adoption of Disposition No. 5⁴ in this matter was correct in protecting the child, but was equally necessary to protect the father from committing regrettable, inadvertent harm to his son as a result of his mental health problems.

⁴ Disposition No. 5 - Transferring permanent custody of the child to his maternal aunt and uncle, Patricia B. and Joseph B., with a goal of transferring full legal guardianship.

The Department would further concur with the assertion set forth in the Guardian Ad Litem's Argument contained in Footnote 3, *Brief in Opposition to Petition for Appeal on Behalf of Nelson B. by His Guardian Ad Litem*, pp. 14-15 – that the Circuit Court had sufficient legal basis to rule under West Virginia Code § 49-6-5(a)(6) [Disposition No. 6] that there was “no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future.” W.Va. Code § 49-6-5(a)(6) (Repl. Vol. 2009). This is the requisite finding essential to sustain an order terminating parental rights to a child. Though all of the parties hold out hope for improvement, there is certainly no guarantee that Paul B. will ever become sufficiently stable to adequately ensure his child's safety or provide for his basic needs.

Rather, the Circuit Court (with the full support of the MDT and the Department) chose an alternative for disposition herein that serves the best interest of the child while preserving the parental rights of the father. The May 15, 2009 Order Following Disposition Hearing leaves the door open for Paul B.'s reunification with his son should he prove himself stable and regain an ability to parent this child. The Circuit Court, while giving much deference to the father in this matter, recognized this disposition as having the least drastic impact upon the family unit yet ensuring the child's safety.

The permanency placement goal for Nelson B. in the meantime is also perhaps a best case scenario for both father and son. Nelson B. now gets to live with his maternal aunt and uncle, Patricia B. and Joseph B. He already has a bond with these relatives and has lived with them continuously now for nearly two (2) years. These relatives have proven to be extremely supportive of the child's liberal contact and visitation with his father. See, Exhibit's G and H. They are also committed to providing Nelson B.

permanency in the form of becoming the child's legal guardians. By all reports, the child has thrived in all facets of life while in the care and custody of his aunt and uncle. The Circuit Court's Order from which Paul B. appeals herein has proven to be the correct outcome of this case. It has provided the optimum situation for Nelson B. to be nurtured in a manner a six year old child deserves, and respects the mental health battle facing Paul B. to ultimately become the father that he appears to have a desire to be.

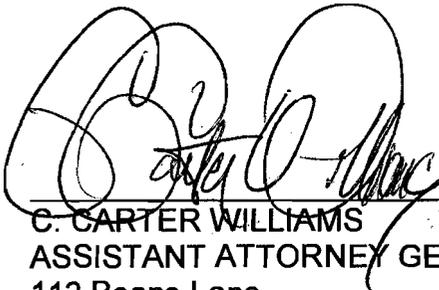
V. CONCLUSION

In light of the foregoing, the Department would respectfully pray this Honorable Court to uphold the May 15, 2009 Order Following Disposition Hearing appealed herein by Paul B., such that Nelson B. can obtain the permanency he is entitled to by law.

Respectfully submitted,

WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,
BY COUNSEL

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CERTIFICATE OF SERVICE

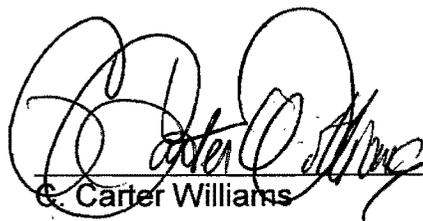
I, C. Carter Williams, do hereby certify that I have served a true copy of the foregoing Brief on Behalf of Appellee, State of West Virginia, Department of Health and Human Resources, upon the following Counsel, by mailing a true copy of same to their respective addresses as shown below, by United States Mail, postage prepaid, on this the 11th day of February, 2010:

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Martha Yeager Walker
Secretary

Family Case Plan
Abuse/Neglect
August 4, 2008

I. Identifying Information

Name of Parents:

Paul [REDACTED] DOB: [REDACTED]
SSN: [REDACTED]

Biological Father

Child(ren):

Nelson [REDACTED] DOB: [REDACTED]

II. Status

An MDT was held in this case on June 10, 2008. At that MDT, All parties agreed to a stipulated adjudication. Paul admitted that he has some mental health issues that impair his ability to parent his son, Nelson. To date, Paul has complied with parenting and adult life skills services provided by Bill Hale of Home Base, Inc. To the knowledge of the DHHR, Paul has complied with receiving treatment from Valley HealthCare, Inc. and has been taking his medications. To date, Paul has missed at least 2 scheduled visitations with Nelson.

III. Family Case Plan

1. Problem: Parenting Issues

Goal: Paul will learn appropriate parenting techniques and apply them accordingly.

Service: 1. ASO services to address parenting issues will be provided by Bill Hale at Home Base, Inc. These services will assist Paul with adult living skills, employment, money management, parenting skills and gaining steady income.

EXHIBIT A

February 11, 2010

2. Home Base, Inc. will supervise visits between Paul and Nelson once per week for 3 hours. Home Base, Inc. will provide DHHR with reports from each visit.

2. Problem: Mental Health Management

Goal: Paul will continue regular treatment for his mental health issues at Valley HealthCare, Inc.

- Services:
1. Paul will receive individualized counseling through Valley HealthCare or another therapist depending upon availability.
 2. Paul will receive psychiatric services through Valley HealthCare, Inc.
 3. Paul will keep all appointments with Valley HealthCare and other medical providers.
 4. Paul will take all medications as prescribed to treat his mental health. Paul will not discontinue any medications unless authorized by his regular psychiatrist.
 5. Paul will sign consents for release of information for all mental health treatment.

3. Problem: Paul has no steady income without Nelson in the home

Goal: Paul will obtain steady income

- Services:
1. Home Base, Inc. will assist Paul with either obtaining employment or obtaining his own SSI check.

Respectfully Submitted,

Melissa McCabe, TSW
Protective Service Worker



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

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Martha Yeager Walker
Secretary

Family Case Plan Review
Abuse/Neglect
September 29, 2008

I. Identifying Information
Name of Parents:

Paul [REDACTED] DOB: [REDACTED]
SSN: [REDACTED]
[REDACTED]
Biological Father

Child(ren) :

Nelson [REDACTED] DOB: [REDACTED]

II. Status

An MDT was held in this case on September 24, 2008. Paul was unable to be present for the MDT but participated over the phone. During this MDT, we discussed Paul's employment opportunities and visitation. He reports that things are going well and he is continuing to work with Bill Hale from Home Base, Inc and he also works with Sarah Barker who supervises his visitation. He is currently visiting with Nelson every Wednesday for 3 hours. These visitations occur at Starting Points in Kingwood. By all reports, these visits are going well and Paul is appropriate during visitation. Nelson is continuing in the care of his maternal Aunt and Uncle in [REDACTED] and is continuing to do very well. He is attending school at [REDACTED] Elementary and is doing well in school. Paul has continued treatment at Valley HealthCare and is seeing the psychiatrist and a targeted case manager. He has been unable to receive therapy as there is a very long waiting list at Valley. Paul's biggest obstacle at this point, is his mental health. His issues are ongoing and the MDT is concerned that Paul will do well temporarily and then cycle back into depression after the improvement period is over.

III. Family Case Plan

- 1. Problem: Parenting Issues

EXHIBIT B

Goal: Paul will learn appropriate parenting techniques and apply them accordingly.

- Service:
1. ASO services to address parenting issues will be provided by Bill Hale at Home Base, Inc. These services will assist Paul with adult living skills, employment, money management, parenting skills and gaining steady income.
 2. Home Base, Inc. will supervise visits between Paul and Nelson once per week for 3 hours. Home Base, Inc. will provide DHHR with reports from each visit.

Progress: Paul has continued to work with Bill Hale from Home Base, Inc. on parenting education and adult life skills. He also visits with Nelson every Wednesday for 3 hours. He has not missed any visitation since the first couple in July. He has been cooperative with services and has worked on parenting issues, money management and daily life management. Paul has not been cooperative to this point with obtaining employment. It is the Department's understanding that Paul may apply for Social Security Disability benefits however, he has not done this to date.

2. Problem: Mental Health Management

Goal: Paul will continue regular treatment for his mental health issues at Valley HealthCare, Inc.

- Services:
1. Paul will receive individualized counseling through Valley HealthCare or another therapist depending upon availability.
 2. Paul will receive psychiatric services through Valley HealthCare, Inc.
 3. Paul will keep all appointments with Valley HealthCare and other medical providers.
 4. Paul will take all medications as prescribed to treat his mental health. Paul will not discontinue any medications unless authorized by his regular psychiatrist.
 5. Paul will sign consents for release of information for all mental health treatment.

Progress: To date, Paul has been unable to receive individualized counseling through Valley HealthCare System as there is currently a very long waiting list for therapists. He has continued to attend all psychiatric appointments and has reportedly been taking his medications regularly. Paul continues to receive targeted case management through Valley HealthCare and to date, has been cooperative with all services. He has signed releases with DHHR for all mental health information.

3. Problem: Paul has no steady income without Nelson in the home

Goal: Paul will obtain steady income

- Services:
1. Home Base, Inc. will assist Paul with either obtaining employment or obtaining his own SSI check.

September 29, 2008

Progress: Paul has stated that he would like to apply for social security disability but has not yet taken the action to apply. It is the MDT's opinion that Paul is physically able to work, as there is no documentation from a physician stating otherwise. At the last MDT, the possibility of working with the Preston County Sheltered Workshop was discussed with Paul. He showed some interest in this and has agreed to contact them for an application. It is unknown if he has done so to this point.

Respectfully Submitted,

Melissa J. McCabe

Melissa McCabe, TLSW
Protective Service Worker



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

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Martha Yeager Walker
Secretary

Child's Case Plan Review
Abuse/Neglect
November 20, 2008

Case No: 08-JA-09
08-JA-13
08-JA-14
08-JA-15

SECTION I: Identifying Information

Name of Parent:

Paul [REDACTED] DOB: [REDACTED]

SSN: [REDACTED]

Biological Father

Child(ren):

Nelson [REDACTED] DOB: [REDACTED]

SECTION II: Status:

MDTs have been held in this case on 6/10/08, 6/25/08, 8/14/08, 9/24/08, 10/20/08, 11/20/08 and 12/16/08. Paul has admitted that he has some mental health issues that impair his ability to parent his son, Nelson. To date, Paul has complied with parenting and adult life skills services provided by Bill Hale of Home Base, Inc. To the knowledge of the DHHR, Paul has complied with receiving treatment from Valley HealthCare, Inc. and has been taking his medications. He has, however, been admitted to the Crisis Unit at Valley HealthCare on one occasion and to Chestnut Ridge Hospital on one occasion in the past 2 months. The admission to the CRU at Valley was 11/20/08 and he remained there for 5 days. The admission to Chestnut Ridge occurred several days before Christmas and Paul signed himself out AMA the following day. At this point, Paul has checked into the Crisis Unit at Valley HealthCare so many times, Medicaid will not pay for his admission there anymore. This is the reason that, before Christmas, Paul was admitted to Chestnut Ridge Hospital rather than Valley HealthCare. Paul has stated to Bill Hale and to Melissa McCabe several times that he refuses to stay at Chestnut

EXHIBIT C

Ridge no matter what. It is concerning to the Department that if Paul were to need mental health assistance, that he would refuse to stay at Chestnut Ridge to obtain that assistance. Some mental health records were recently received by the Department from Valley HealthCare. In a case management progress note date 12/15/08, Paul stated to his service coordinator that he was experiencing "visual hallucinations in the form of a dark cloud and audio hallucinations in the form of his deceased wife yelling at him". These statements are of particular concern to the Department as they seem to be evidence that Paul is not in an adequate frame of mind to care for a child.

SECTION II: FAMILY CASE PLAN

1. Problem: Parenting Issues

Goal: Paul will learn appropriate parenting techniques and apply them accordingly.

- Service:
1. ASO services to address parenting issues will be provided by Bill Hale at Home Base, Inc. These services will assist Paul with adult living skills, employment, money management, parenting skills and gaining steady income.
 2. Home Base, Inc. will supervise visits between Paul and Nelson once per week for 3 hours. Home Base, Inc. will provide DHHR with reports from each visit.

Progress: Paul has continued to work with Bill Hale from Home Base, Inc. on parenting education and adult life skills. He also visits with Nelson twice a week for 2 hours each. He missed a couple visits in July, 2007 and then again in November when he was admitted to the hospital. He has been cooperative with services and has worked on parenting issues, money management and daily life management. Paul has not been cooperative to this point with obtaining employment. It is the Department's understanding that Paul has applied for Social Security Disability benefits however, was denied and has since, reapplied. Paul has not provided the MDT with any medical reasoning why he could not obtain employment. He has done so in the past and it is the position of the MDT that Paul could maintain employment if necessary. It has been reported by Home Base, Inc. that Paul has made no reasonable efforts to obtain employment.

2. Problem: Mental Health Management

Goal: Paul will continue regular treatment for his mental health issues at Valley HealthCare, Inc.

- Services:
1. Paul will receive individualized counseling through Valley HealthCare or another therapist depending upon availability.
 2. Paul will receive psychiatric services through Valley HealthCare, Inc.
 3. Paul will keep all appointments with Valley HealthCare and other medical providers.
 4. Paul will take all medications as prescribed to treat his mental health. Paul will

not discontinue any medications unless authorized by his regular psychiatrist.

5. Paul will sign consents for release of information for all mental health treatment.

Progress: For the past 3 months, Paul has been receiving weekly therapy with Justin Semack at Valley HealthCare. His last appointment with a psychiatrist was August 25, 2008. He has received psychiatric treatment through the Crisis Unit at Valley since that time. Those records were requested by DHHR but have not yet been received. He has reportedly been taking his medications regularly. Paul continues to receive targeted case management through Valley HealthCare on a monthly basis. He has signed releases with DHHR for all mental health information. The Department obtained some records of case management from Valley HealthCare. In the content of a progress note dated 12/15/08, Paul admitted to his service coordinator that he was experiencing "visual hallucinations in the form of a dark cloud and audio hallucinations in the form of the voice of his deceased wife yelling at him".

3. **Problem:** Paul has no steady income without Nelson in the home

Goal: Paul will obtain steady income

Services: 1. Home Base, Inc. will assist Paul with either obtaining employment or obtaining his own SSI check.

Progress: Paul has applied for Social Security Disability and has been denied. He has since reapplied and has not yet received an answer from the Social Security Administration. It is the MDT's opinion that Paul is physically able to work, as there is no documentation from a physician stating otherwise. At the MDT on September 24, the possibility of working with the Preston County Sheltered Workshop was discussed with Paul. He showed some interest in this however, on the way to fill out an application, Paul made a suicidal ideation to Bill Hale and was admitted to the Crisis Unit at Valley HealthCare.

SECTION IV: PERMANENCY PLAN

Nelson [REDACTED]

Permanency Plan is legal guardianship transferred to Joseph and Patricia [REDACTED] with regular visitation between Nelson and his father.

Concurrent Plan is adoption by non-related person.

SECTION IV: RECOMMENDATIONS

The Department of Health and Human Resources recommends Disposition 49-6-5 (5) of Paul [REDACTED] to his child, Nelson [REDACTED]. It is the Department's position that Mr. [REDACTED] is unable to provide adequately for his child's needs due to ongoing mental illness. The Department feels it would be in the child's best interest for legal custody to be permanently transferred to his maternal aunt and uncle, Joseph and Patricia [REDACTED] where he is currently placed.fda

The Department requests that the court find that the Department has acted in the best interests of the children.

The Department requests that the court find the Department has made reasonable efforts to make it possible for the child to return to the home and that reunification is not in the best interest of the child.

SECTION V: WITNESSES

Melissa McCabe, Protective Service Worker with DHHR, 329-4340, Preston County DHHR, PO Box 100 Kingwood, WV 26537, can testify to the information contained in the child's case plan.

William Hale, Outreach Coordinator with Home Base, Inc., (304) 698-1346, 33 Moran Circle Fairmont, WV 26554, can testify to the information contained in the child's case plan.

Sarah Barker, Outreach Coordinator with Home Base, Inc., (443) 614-5456, 33 Moran Circle Fairmont, WV 26554, can testify to the information contained in the child's case plan.

Respectfully Submitted,

Melissa J. McCabe, TLSW
Child Protective Service Worker



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Joe Manchin III
Governor

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Region III
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Martha Yeager Walker
Secretary

Child's Case Plan
Abuse/Neglect
January 5, 2009

08-JA-20

Case No: ~~08-JA-09~~
~~08-JA-13~~
~~08-JA-14~~
~~08-JA-15~~

SECTION I: Identifying Information

Name of Parent:

Paul [REDACTED] DOB: [REDACTED]

SSN: [REDACTED]

Biological Father

Child(ren):

Nelson [REDACTED] DOB: [REDACTED]

SECTION II: Status:

MDTs have been held in this case on 6/10/08, 6/25/08, 8/14/08, 9/24/08, 10/20/08, 11/20/08 and 12/16/08. Paul has admitted that he has some mental health issues that impair his ability to parent his son, Nelson. To date, Paul has complied with parenting and adult life skills services provided by Bill Hale of Home Base, Inc. To the knowledge of the DHHR, Paul has complied with receiving treatment from Valley HealthCare, Inc. and has been taking his medications. He has, however, been admitted to the Crisis Unit at Valley HealthCare on one occasion and to Chestnut Ridge Hospital on one occasion in the past 2 months. The admission to the CRU at Valley was 11/20/08 and he remained there for 5 days. The admission to Chestnut Ridge occurred several days before Christmas and Paul signed himself out AMA the following day. At this point, Paul has checked into the Crisis Unit at Valley HealthCare so many times, Medicaid will not pay for his admission there anymore. This is the reason that, before Christmas, Paul was admitted to Chestnut Ridge Hospital rather than Valley HealthCare. Paul has stated to Bill Hale and to Melissa McCabe several times that he refuses to stay at Chestnut

EXHIBIT D

January 5, 2009

Ridge no matter what. It is concerning to the Department that if Paul were to need mental health assistance, that he would refuse to stay at Chestnut Ridge to obtain that assistance. Some mental health records were recently received by the Department from Valley HealthCare. In a case management progress note date 12/15/08, Paul stated to his service coordinator that he was experiencing "visual hallucinations in the form of a dark cloud and audio hallucinations in the form of his deceased wife yelling at him". These statements are of particular concern to the Department as they seem to be evidence that Paul is not in an adequate frame of mind to care for a child.

SECTION II: FAMILY CASE PLAN

1. Problem: Parenting Issues

Goal: Paul will learn appropriate parenting techniques and apply them accordingly.

Service: 1. ASO services to address parenting issues will be provided by Bill Hale at Home Base, Inc. These services will assist Paul with adult living skills, employment, money management, parenting skills and gaining steady income.

2. Home Base, Inc. will supervise visits between Paul and Nelson once per week for 3 hours. Home Base, Inc. will provide DHHR with reports from each visit.

Progress: Paul has continued to work with Bill Hale from Home Base, Inc. on parenting education and adult life skills. He also visits with Nelson twice a week for 2 hours each. He missed a couple visits in July, 2007 and then again in November when he was admitted to the hospital. He has been cooperative with services and has worked on parenting issues, money management and daily life management. Paul has not been cooperative to this point with obtaining employment. It is the Department's understanding that Paul has applied for Social Security Disability benefits however, was denied and has since, reapplied. Paul has not provided the MDT with any medical reasoning why he could not obtain employment. He has done so in the past and it is the position of the MDT that Paul could maintain employment if necessary. It has been reported by Home Base, Inc. that Paul has made no reasonable efforts to obtain employment.

2. Problem: Mental Health Management

Goal: Paul will continue regular treatment for his mental health issues at Valley HealthCare, Inc.

Services: 1. Paul will receive individualized counseling through Valley HealthCare or another therapist depending upon availability.

2. Paul will receive psychiatric services through Valley HealthCare, Inc.

3. Paul will keep all appointments with Valley HealthCare and other medical providers.

4. Paul will take all medications as prescribed to treat his mental health. Paul will

January 5, 2009

not discontinue any medications unless authorized by his regular psychiatrist.

5. Paul will sign consents for release of information for all mental health treatment.

Progress: For the past 3 months, Paul has been receiving weekly therapy with Justin Semack at Valley HealthCare. His last appointment with a psychiatrist was August 25, 2008. He has received psychiatric treatment through the Crisis Unit at Valley since that time. Those records were requested by DHHR but have not yet been received. He has reportedly been taking his medications regularly. Paul continues to receive targeted case management through Valley HealthCare on a monthly basis. He has signed releases with DHHR for all mental health information. The Department obtained some records of case management from Valley HealthCare. In the content of a progress note dated 12/15/08, Paul admitted to his service coordinator that he was experiencing "visual hallucinations in the form of a dark cloud and audio hallucinations in the form of the voice of his deceased wife yelling at him".

3. Problem: Paul has no steady income without Nelson in the home

Goal: Paul will obtain steady income

Services: 1. Home Base, Inc. will assist Paul with either obtaining employment or obtaining his own SSI check.

Progress: Paul has applied for Social Security Disability and has been denied. He has since reapplied and has not yet received an answer from the Social Security Administration. It is the MDT's opinion that Paul is physically able to work, as there is no documentation from a physician stating otherwise. At the MDT on September 24, the possibility of working with the Preston County Sheltered Workshop was discussed with Paul. He showed some interest in this however, on the way to fill out an application, Paul made a suicidal ideation to Bill Hale and was admitted to the Crisis Unit at Valley HealthCare.

SECTION IV: PERMANENCY PLAN

Nelson [REDACTED]

Permanency Plan is legal guardianship transferred to Joseph and Patricia [REDACTED] with regular visitation between Nelson and his father.

Concurrent Plan is adoption by non-related person.

SECTION IV: RECOMMENDATIONS

The Department of Health and Human Resources recommends Disposition 49-6-5 (5) of Paul [REDACTED] to his child, Nelson [REDACTED]. It is the Department's position that Mr. [REDACTED] is unable to provide adequately for his child's needs due to ongoing mental illness. The Department feels it would be in the child's best interest for legal custody to be permanently transferred to his maternal aunt and uncle, Joseph and Patricia [REDACTED] where he is currently placed.

The Department requests that the court find that the Department has acted in the best interests of the children.

The Department requests that the court find the Department has made reasonable efforts to make it possible for the child to return to the home and that reunification is not in the best interest of the child.

January 5, 2009

SECTION V: WITNESSES

Melissa McCabe, Protective Service Worker with DHHR, 329-4340, Preston County DHHR, PO Box 100 Kingwood, WV 26537, can testify to the information contained in the child's case plan.

William Hale, Outreach Coordinator with Home Base, Inc., (304) 698-1346, 33 Moran Circle Fairmont, WV 26554, can testify to the information contained in the child's case plan.

Sarah Barker, Outreach Coordinator with Home Base, Inc., (443) 614-5456, 33 Moran Circle Fairmont, WV 26554, can testify to the information contained in the child's case plan.

Respectfully Submitted,

Melissa J. McCabe

Melissa J. McCabe, TLSW
Child Protective Service Worker



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

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Martha Yeager Walker
Secretary

Addendum to Child's Case Plan
Abuse/Neglect
February 12, 2009

Case No: 08-JA-20

Identifying Information

Name of Parent:

Paul [REDACTED] DOB: [REDACTED]
SSN: [REDACTED]
[REDACTED]
Biological Father

Child(ren):

Nelson [REDACTED] DOB: [REDACTED]

PERMANENCY PLAN

Nelson [REDACTED]
Permanency Plan is legal guardianship transferred to Joseph and Patricia [REDACTED] with regular visitation between Nelson and his father.
Concurrent Plan is adoption by non-related person.

RECOMMENDATIONS

The Department of Health and Human Resources recommends Disposition 49-6-5 (5) of Paul [REDACTED] to his child, Nelson [REDACTED]. It is the Department's position that Mr. [REDACTED] is unable to provide adequately for his child's needs due to ongoing mental illness. The Department feels it would be in the child's best interest for legal guardianship to be permanently transferred to his maternal aunt and uncle, Joseph and Patricia [REDACTED] where he is currently placed.

The Department recommends that supervised visits continue at least weekly between Paul [REDACTED] and Nelson [REDACTED]. This was discussed at an MDT on 2/9/09 and the [REDACTED] agree to supervise this contact.

The Department requests that the court find that the Department has acted in the best interests of the children.

EXHIBIT E

● Page 2

February 12, 2009

The Department requests that the court find the Department has made reasonable efforts to make it possible for the child to return to the home and that reunification is not in the best interest of the child.

Respectfully Submitted,



Melissa J. McCabe, TLSW
Child Protective Service Worker



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

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Martha Yeager Walker
Secretary

**Court Report
Abuse/Neglect
May 8, 2009**

Case No: 08-JA-20

SECTION I: Identifying Information

Name of Parent:

Paul [REDACTED] DOB: [REDACTED]
SSN: [REDACTED]

Biological Father

Child(ren):

Nelson [REDACTED] DOB: [REDACTED]

SECTION II: Status:

A Legal Guardianship MDT was held in this case on February 23, 2009. Present at this MDT were Melissa McCabe, DHHR; Malinda Thomas, CASA; Peggy Kincaid, DHHR Adoption Supervisor; Natalie Sal, GAL; Cheryl Warman, GAL for Paul [REDACTED], Rick Parks, CPS Supervisor and Joseph and Patricia [REDACTED], potential legal guardians. Paul [REDACTED] was invited to this MDT meeting however, he did not participate due to a prior scheduled appointment at Valley Healthcare. At this MDT, the application for subsidized legal guardianship and the agreement for subsidized legal guardianship were discussed and signed by all parties. These were subsequently approved and signed by Lisa McMullen, Program Manager at DHHR.

Since the Dispositional hearing, the [REDACTED] have had very little contact with Paul [REDACTED]. Patricia [REDACTED] has kept a calendar of their contact with him and reports that they have not seen or spoken to Paul since April 9, 2009. Since disposition, the following contact has been made: On 3/12/09, Paul called on the telephone and spoke with Nelson; On 3/13/09 the [REDACTED] contacted Paul and scheduled a visit for 3/15/09. Joseph took Nelson to Paul's home on 3/15/09 and they visited for 1 1/2 hours. Joseph reports that the house was filthy and he advised Paul that he would need to clean it before they could have anymore visits there. On 3/24/09 Patricia ran into Paul at Foodland and they scheduled a visit for 3/27/09. On 3/27/09, Paul did not show up for the visit. On 4/9/09 Paul called the

February 11, 2010

██████████ after school but Nelson was not able to talk to him. He told them that he hadn't seen anyone to ask for a ride and that it was supposed to rain on the following day so he wouldn't be able to come over to visit. The ██████████ have not heard from Paul since that phone call approximately one month ago. At the Disposition hearing, the court ordered the Department to prepare a visitation plan as a back up for a situation like this. That plan is attached to this court report.

The Department has visited with Nelson in his home at least once per month since he moved in with the ██████████. It should be noted that since his arrival at their home, he has been taken off all seizure medication and has been seizure free. He has also earned perfect attendance at school and has begun to improve greatly with his reading abilities. Nelson is very healthy and happy in the ██████████ home and the Department feels that this is the most appropriate and nurturing place for him to be.

It is the Department's understanding that Joseph and Patricia ██████████ have retained Mary Nelson to represent them and prepare their petition for legal guardianship. The Department has spoken with Ms. Nelson and has been informed that the petition has been prepared and will be ready for the court hearing by the scheduled hearing date on May 15, 2009.

SECTION III: PERMANENCY PLAN

Nelson ██████████

Permanency Plan is legal guardianship transferred to Joseph and Patricia ██████████ with regular visitation between Nelson and his father.

Concurrent Plan is adoption by non-related person.

SECTION IV: RECOMMENDATIONS

The Department of Health and Human Resources recommends that Legal Guardianship of Nelson ██████████ be permanently transferred to his maternal aunt and uncle, Joseph and Patricia ██████████

Respectfully Submitted,

Melissa J. McCabe, TLSW
Child Protective Service Worker



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

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Martha Yeager Walker
Secretary

Visitation Schedule
June 2, 2009

Case Number(s): 08-JA-20

Name of Parents:

Paul [REDACTED] DOB: [REDACTED]
SSN: [REDACTED]

[REDACTED]
Biological Father

Joseph and Patricia [REDACTED]
[REDACTED]
[REDACTED]

Maternal Aunt and Uncle

Child(ren):

Nelson [REDACTED] DOB: [REDACTED]

As ordered by the court and discussed at an MDT held on June 2, 2009, the following is a revised visitation schedule in this case for June and July, 2009. An MDT has been scheduled for July 20, 2009 to review the plan and decide on a permanent plan. This plan was agreed upon by all members of the MDT. The following were present at this MDT: Melissa McCabe, Anne Armstrong (via telephone), Natalie Sal (via telephone), Paul [REDACTED], Joseph [REDACTED] Cheryl Warman, Chaelyn Casteel, Mary Nelson and Wesley Thorne from Valley HealthCare. This plan is as follows:

- Visits that have been scheduled at the [REDACTED] home will occur on Thursday evenings from 6:00 PM to 7:00 PM. The [REDACTED] will be at home during this time and will assume that Paul will be there as well.

- Visits that have been scheduled at Brown's Park will also occur on Thursday evenings from 6:00 PM to 7:00 PM.
- If one party does not arrive at the visit on time, the other party will wait a minimum of 20 minutes before leaving the visit.
- If Paul is unable to be present for the visit, he will contact the [REDACTED] to cancel or reschedule.
- If the [REDACTED] are unable to be present for the visit, they will contact Paul to cancel or reschedule.
- If a visit must be missed by either the [REDACTED] or Paul [REDACTED] that visit may be made up the following week. This can occur as a separate visit or as an hour added to the prior arranged visit time.
- It is Paul's responsibility to arrange his own transportation to the [REDACTED] home and to Brown's Park for visitation. Mr. [REDACTED] has agreed to provide transportation after the visits if Paul can arrange his own transportation to the visit. Paul will need to let Mrs. [REDACTED] know prior to the scheduled visitation time if he will need transportation home.
- The visits are to be supervised by either Joseph or Patricia [REDACTED]
- Mr. [REDACTED] and Paul [REDACTED] have agreed that additional visits may be arranged at Paul's request by contacting the [REDACTED] to schedule a date and time.

Respectfully Submitted,

Melissa McCabe, TLSW
Child Protective Service Worker