

IN THE SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA

* In Re Isaiah A. Wyoming Co. 06-JA-87 *

PETITION FOR APPEAL

From Order Dated December 29, 2008

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FOR ISAIAH A.**
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In the Matter of:

Isaiah A., age three,
a minor child of tender years

Wyoming County Case No. 06-JA-87

PETITION FOR APPEAL

This is the *Guardian Ad Litem's* appeal from the Final Order Following Disposition Hearing entered December 29, 2008 by the Circuit Court of Wyoming County, West Virginia, in this Child Abuse & Neglect case. The Order is attached hereto as exhibit one. At issue is the future health, safety and welfare of three year-old Isaiah A., born September 23, 2005. Isaiah was taken into State custody on October 2, 2006 and has resided in relative foster care since.

This Appeal takes the position that the Court erred by failing to terminate the parental rights of the respondent mother, Alicia . The biological father' rights were already terminated.

This Appeal follows a meeting with the Department of Health and Human Resources supervisors and the Wyoming County Prosecuting Attorney's Office. At that meeting, the State of West Virginia representatives expressed their support of this Petition, and this *Guardian Ad Litem* expects that the State of West Virginia will join in this Petition.

ASSIGNMENTS OF ERRORS

This Guardian asserts that the Circuit Court committed reversible error as follows:

1. By failing to terminate the parental rights of the respondent mother who, despite two years of improvement periods and continuances (1) remains drug addicted, (2) remains in an abusive relationship with a convicted felon who is, himself, a respondent in his own children's abuse & neglect case, (3) refused in-home services on numerous occasions, (4) refused to drug screen for the better part of two years, (5) missed over half of her scheduled visits with the child, (6) cursed, screamed and otherwise harassed CPS workers and in-home providers who were offering to help her, (7) lied to the Court about her drug abuse during the disposition hearing and was shown to have lied by virtue of a drug test, (8) used cocaine, PCP, morphine, oxymorphone, oxycodone, oxazepam, and marijuana during the case while insisting that she did not have a drug problem, (9) was arrested for domestic altercations during her "last chance" improvement period, and (10) did not make any improvement nor show any propensity to make improvement during the two years that this case has labored through extensions and continuances.
2. By failing to apply an appropriate standard for termination of parental rights ("this Court believes there is a **glimmer of hope** . . . Accordingly, this Court is unwilling to wholly foreclose the possibility of reunification . . .") {emphasis supplied}, despite making

factual findings that (1) the conditions of abuse and neglect existing at the time of removal in this matter constituted an emergency situation sufficient to render unreasonable or impossible any efforts to preserve the family at that time, (2) that respondent has not corrected the conditions of abuse and/or neglect, (3) the respondent has taken cocaine, PCP, morphine and many other drugs but denies a drug problem, (4) that so long as respondent continues to allow Wendell Tolliver in her home the child remains an abuse or neglected child, and (5) that respondent has been routinely unavailable for drug tests, and (6) has shown only minimal improvement.¹

3. By failing to make a plausible account of the evidence in the case at trial and thereby failing to make an appropriate ultimate ruling that termination of the respondent mother's parental rights was necessary for the welfare of Isaiah A.

¹ Having served as *Guardian Ad Litem* and having been present throughout the proceedings in this case, it is difficult for me to understand to what improvement the Court refers.

STANDARD OF REVIEW

A two-pronged differential standard of review applies to the findings of a Circuit Court upon appeal in an Abuse and Neglect case.

Factual Findings

The lower court's factual findings are reviewed on a clearly erroneous standard. *Syl. Pt. 1, State ex rel. DHHR v. Fox*, 218 W. Va 397, 624 S.E.2d 834 (2005)(relying on a long series of cases beginning with *In the Interest of Tiffany Marie S.*, 196 W. Va. 223, 470 S.E.2d 177 (1996)).

Ultimate Disposition

Although the lower court's legal conclusions are subject to *de novo* review, the lower court's ultimate disposition is reviewed under an abuse of discretion standard. The Supreme Court has held that it may not overturn a lower court simply because it would have decided the case differently, but does require the lower court's account of the evidence to be plausible in light of the record. *Syl. Pt. 1, In the Interest of Jamie Nicole H.*, 205 W. Va. 176, 517 S.E.2d 41 (1999); *Syl. Pt. 1, In the Interest of Tiffany Marie S.*, 196 W. Va. 223, 470 S.E.2d 177 (1996).

FACTS IN EVIDENCE AT DISPOSITION HEARING

I. The Family Case Plan - Requirements for Improvement

The Family Case Plan for Alicia was consistent throughout this case, though the Department utilized five different case workers.²

In essence, the Family case Plan only required of Alicia the following:

1. Drug Screening and a Drug Free Lifestyle
2. Parent Skills In-home Training
3. Regular and consistent visitation with Isaiah
4. Anger Management
5. Disassociate herself from people committing criminal behaviors

Child Protective Services Worker Julia Doss (before a petition was even filed) provided services to Ms. for drug abuse, domestic violence issues, and lack of a stable environment.

Transcript at 13. CPSW Doss offered in-patient rehabilitation. Transcript at 17.

CPS Worker Arthur Houchins worked alongside Julia Doss. He spoke to Ms. concerning her cocaine use, Transcript at 22, and attempted drug screening. Id.

CPS Worker Susan Vandall took responsibility for this case in August of 2006. By September 2006, she had identified anger management and drug screening as primary issues for Alicia. Transcript at 30. Around September 15, 2006, CPSW Vandall petitioned for custody. During Susan Vandall's handling of the case, the primary issues of concern were drug abuse, domestic violence and simply maintaining contact between Ms. and the Department. Transcript at 33-35.

² The case workers were, in chronological order, Julia Doss, Arthur Houchins, Susan Vandall, Rebecca Arrington, and Karina Gibson.

Rebecca Arrington served the longest stint at Alicia case manager, from June, 2007 to June of 2008. Along with the Multi-Disciplinary Team, CPS Worker Arrington formulated a case plan focusing on Alicia drug use, association with criminal actors, visitation and contact with the Department. Transcript at 122 & 123.

This Petition for Appeal will address Ms. failure to improve in three sections (1) her failure to improve drug testing, (2) her failure to improve her parenting and strengthen her relationship with Isaiah A. through visitations, and (3) her failure to disassociate with criminal actors.

II. Alicia Failed to Improve Her Drug Abuse

Alicia abused controlled substances throughout this entire case. She admitted to using PCP, cocaine³ and morphine⁴. She tested positive for all of those as well as benzodiazapines, other opiates, oxymorphone, marijuana and others. (Transcript citations below).

Ms. failed in three ways: (1) on the rare occasions that she submitted for testing, she was positive for a myriad of substances, (2) she more often than not refused to submit to drug testing, and (3) she never recognized her drug abuse as a problem in need of improvement.

³ Apparently, PCP and cocaine were the refreshments at her father's superbowl party. Transcript at 156, lines 6-16.

⁴ Which she claims to have only used once. She was simply so unlucky as to have been caught the one and only time she used morphine. Transcript 161, line 8 through 162, line 18.

A. Multiple Positive Drug Tests

At the October 2, 2006, Preliminary Hearing, Alicia tested positive for benzodiazapines. Transcript at 33. She'd previously admitted cocaine and PCP use. Transcript at 24 & 156. She tested positive for morphine on March 18, 2008. Transcript at 78 & 161-2. Lastly, she tested positive on the day of the disposition hearing for hydrocodone, oxycodone, oxazepam, and marijuana. See, FINAL ORDER (exhibit one) at 10, paragraph 41.

B. Refused Drug Tests - Bizarre Explanations

Alicia refused multiple drug tests, often with nonsensical excuses or bizarre behavior. For example, on April 8, 2008, in-home service provider Andrea Saunders attempted to transport Ms. for drug screening. Instead of cooperating, Ms. called her lawyer's office and then began screaming at and cursing her in-home provider. Transcript at 84, line 19 to Pg. 85, line 10. The most bizarre refusal came when DHHR Case Aid Pam Blankenship arrived at Ms. home to transport her for a drug screen. Ms. refused the screening stating that she had no transportation. When Pam Blankenship explained that she *was* the transportation, Ms. still refused. Transcript at 99.

C. Refused Drug Tests - Ms. said that she'd fail the test anyway.

Alicia refused some drug tests with the simple explanation that she would not test clean anyway. That was her explanation for refusing on April 23, 2007. Transcript at 43, line

23 to Pg. 44, line 11. After an MDT on March 10, 2008, in-home service provider Andrea Saunders was assigned to take Alicia for a drug screen, but Ms. refused to go saying that she was tired and her screen would not be clean anyway. Transcript at 84, lines 5-9.

D. Refused/Missed Drug Tests - No Explanation

Alicia missed drug screens very often. There were five in-home service providers and case aids who attempted to facilitate Ms. drug screens.⁵ They each testified about Alicia missing or refusing to comply with drug screening.

Alicia disappeared for a while, and the Department could not locate her to even attempt drug screens between September, 2006 and March, 2007. Transcript at 40.

Jason McVey, an in-home provider, testified that although he discussed the importance of clean drug screens with Alicia, her execution with regard to actually submitting to the screens was poor. Transcript at 76.

Andrea Saunders, an in-home provider, testified that Alicia refused to go with her for drug screening following an MDT meeting on March 10, 2008, Transcript at 84, missed an agreed appointment to drug screen on March 17, 2008, Transcript at 84, and threw a fit, cursing and screaming on April 8, 2008 when Andrea Saunders stopped at her home and offered to take her to a drug screen. Transcript at 85.

Dara Acord, another in-home provider, testified that Ms. refused to submit to a drug screen on April 23, 2008, Transcript at 91, missed a scheduled appointment for drug

⁵ In the order they testified, Jason McVey (pg. 72), Andrea Saunders (pg. 82), Dara Accord (pg. 88), Pamela Blankenship (pg. 97), and Dreama England (pg. 104).

screening on April 28, 2008, Transcript at 91, and again on May 1, 2008. Transcript at 91.

Pamela Blankenship, case aid, testified that she traveled to scheduled visitations, meetings and appointments for the purpose of collecting Ms. [redacted] for random drug screens. She testified that she attempted to find Ms. [redacted] on 4 or 5 occasions. Transcript at 98. Ms. [redacted] missed so many of the scheduled visits, appointments and meetings that case aid Blankenship only found her one time, and on that occasion, Ms. [redacted] refused to submit to drug screening. Transcript at 98-99.

Dreama England, another case aid, testified that she tried to take Ms. [redacted] for a drug screen on March 6, 2008, but Ms. [redacted] refused. Transcript at 109-110.

E. Alicia Failed to Recognize Drug Abuse as a Problem

In-home service provider Dara Acord testified that Ms. [redacted] took the attitude that she did not need the skills or services being offered to her because she felt that she was an excellent mother. Transcript at 93. Ms. [redacted] even refused to meet as needed, preferring to cut the services offered to her in half. Transcript at 94.

Alicia [redacted] herself testified that her use of PCP and cocaine was excusable because she used those drugs at a superbowl party. Transcript at 156. She claims that her positive test for morphine was just bad luck because that was the one and only time she ever used morphine. Transcript at 161-162. Then, Ms. [redacted] told the Circuit Court that she was clean as of the time of the disposition hearing and did not have a drug problem. Transcript at 163 and FINAL

ORDER, page 10, paragraphs 40-41.⁶ According to discovery filed in the case, and according to Department records, Alicia called CPSW Rebecca Arrington and left a message on her phone that this was “not a drug case.” Transcript at 186. Ms. says she cannot remember making that call. Id.

F. Drug Abuse Was Not Resolved - Even at the End

During the disposition hearing on September 30, 2008, Alicia lied to the Court by telling the Court, in response to the Court’s own questioning that she had quit using drugs and would test completely clean if tested that day. Transcript at 204. As noted above, she did submit to a drug test that day and was found to be positive for hydrocodone, oxycodone, oxazepam, and tetrahydrocannabinol, the active ingredient in marijuana and hashish. FINAL ORDER, page 10, paragraph 41.

III. Alicia Failed to Improve Parenting and Keep Visitations

A. Alicia Missed Over Half of Her Visits with Isaiah.

Alicia failed to keep her visitations throughout the case. In all, she missed 15 of 28 scheduled visits. Transcript at 104-105. Ms cancelled four(4) visits, and simply failed to show up for another eleven (11) visits. Transcript at 105-107.

⁶ As noted above, she then proceeded to test positive for four controlled substances which she was not prescribed.

B. Alicia Just Quit Visiting Isaiah.

According to the foster parent (who is Ms. aunt), Ms. missed twelve (12) consecutive visits, Transcript at 221, and had telephoned to say that she was not going to come to any more visits because it was not worth her time. Transcript at 214.

Case Aid Dreama England, whose primary job was to transport Ms. for visitation, characterized Ms efforts to visit as “Not very good” and said that Ms. just had not shown up for visits. Transcript at 105, lines 21, and 23-24.

C. Alicia Did Not Want In-Home Services and Did Not Benefit From Them

As for parenting classes, Ms. missed several, and told in-home workers that she did not need the services. Transcript at 93 - 94. Case Manager Rebecca Arrington testified that the only part of the Family Case Plan Ms. did cooperate with was in-home services, but that by the end of the case, Ms. was not even doing that. Transcript at 127.

Case Manager Arrington testified that the conditions which has caused Ms. to lose custody of Isaiah A. still existed after two years of improvement periods and continuances. Transcript at 128. Case Manager Arrington further opined that after two years of working with Ms., she just did not think that Ms. possessed the appropriate motivation for parenting. Transcript at 129. Case Manager Arrington testified that there is no likelihood that Alicia will improve the conditions and that termination of parental rights is in Isaiah A’s best interests. Id. Case Manager Arrington testified that there was nothing more the Department could have done. Transcript at 132.

IV. ALICIA

**FAILED TO DISASSOCIATE FROM
CRIMINAL ELEMENTS**

Alicia was determined throughout this case to maintain her relationship with Wendell Tolliver. Transcript at 35, 63, 123 & 129. Ms. told the MDT that she would not give up her relationship with Mr. Tolliver to regain custody of Isaiah. Transcript at 63.

Wendell Tolliver has been convicted of felony drug possession, transfer of stolen property, possession of a loaded gun in a vehicle, and domestic battery. Transcript at 164. Mr. Tolliver is a respondent in his own child abuse & neglect case. Mr. Tolliver and Ms. have engaged in domestic altercations during this case. Transcript at 35, 36 Mr. Tolliver was present when Ms. was arrested on March 22, 2008. Transcript at 176.

Despite all these facts about Mr. Tolliver, Ms. testified that he is a good father and that if she gets to take Isaiah home, Mr. Tolliver will be there as his step-father of sorts. Transcript at 172.⁷

V. ALICIA

HAD NO INTENT TO IMPROVE

Throughout the case, Alicia had either no intent or no capacity to improve. She so evidently lacked that characteristic that several witnesses remarked upon it from the stand.

CPS worker, Susan Vandal, had trouble catching up with Ms. and confirmed that

⁷ Mr. Wendell Tolliver is currently a resident of the Southern Regional Jail where his incarceration status shows as "Pre-trial Felon." The Abuse & Neglect action involving Mr. Tolliver remains pending, and those children are in Department custody.

the in-home service providers did, too, Transcript at 49, and said Ms. [redacted] did less than expected. Transcript at 50. According to CPS worker Vandall, Ms. [redacted] continued to use drugs and demonstrated a lack of cooperation the entire time that CPS worker Vandall worked with Ms. [redacted]. Transcript at 51.

In home service provider Jason McVey testified that Ms. [redacted] execution was poor. Transcript at 76. In home provider Andrea Saunders recounted several problems trying to provide services to Ms. [redacted], and said that Ms. [redacted] and her paramour, Wendell Tolliver, shouted and cursed her. Transcript at 84-5. Provider Dara Acord testified that Ms. [redacted] denied the need for services, thought she was already an excellent mother, and refused to meet the requisite number of times. Transcript at 93-4. When asked directly about Alicia [redacted] good intentions during the months he was the in-home provider for Ms. [redacted], Dara Acord responded, “She had no good intentions.” Transcript at 95.

Department Case Aids, Pam Blankenship and Dreama England both testified that they could not catch up with Ms. [redacted] to provide services or transportation very often, and that when they did find her, Ms. [redacted] refused services. Transcript at 97-110.

Case Manager Rebecca Arrington testified and confirmed that the service providers and case aids had consistently reported inability to provide services to Ms. [redacted] due to Ms. [redacted] lack of cooperation or outright refusals. Transcript at 125. Case Manager Arrington further testified that the conditions prevalent at the time the child was removed from Ms. [redacted] still exist, Transcript at 128, and stated that after two years of working with her, she just does not think Ms. [redacted] has appropriate motivation for parenting. Transcript at 129. When asked if she thinks Ms. [redacted] is likely to improve, she answered, “No.” Id. She also testified that there was

nothing more the Department could have done, Transcript at 132, and that termination of parental rights is in Isaiah's best interests. Transcript at 129.

The last CPS case worker assigned, Karina Gibson, agreed that there has been no change in Ms. behavior or in the circumstances constituting abuse and neglect since the beginning of the case. Transcript at 116-7.

VI. THE LAST CHANCE - THE FINAL IMPROVEMENT PERIOD

Despite multiple failures, and mostly as a result of the good effort of her lawyer, the MDT agreed to extend Alicia one final improvement period in January of 2008. Transcript at 174. Her in-home provider reminded her shortly thereafter that she was on her last opportunity to show improvement. Transcript at 175. The following is a summary of her performance during that "last chance" improvement period:

<u>Date</u>	<u>Event</u>	<u>Transcript Page</u>
March 5, 2008	Refused Drug Screen	176
March 6, 2008	Refused Drug Screen	176
March 10, 2008	Refused Drug Screen At MDT	190
March 14, 2008	Refused Drug Screen	176
March 22, 2008	Arrested in Domestic Altercation	176
April 10, 2008	Missed Visit with Isaiah after Court	183
April 10, 2008	Also Refused In-Court Drug Screen	183
April 24, 2008	Refused Drug Screen	183
April 27, 2008	Hung Up on Case Aid Offering Visitation	184
April 28, 2008	Missed Appointment to Drug Screen	91
May 1, 2008	Missed Appointment to Drug Screen	91
May 5, 2008	Refused Drug Screen	184
May 20, 2008	Missed Appointment to Drug Screen	184
July 14, 2008	Refused Drug Screen - Cannot Remember Why	190
Sept. 30, 2008	Failed Drug Screen - Multiple Controlled Substances	*

* See, FINAL ORDER, page 10, paragraph 41.

Perhaps the most troubling answer any witness gave during the entire hearing is Alicia own answer to the question, “Have we seen your best effort?” After deliberation, Ms. said, “Yes”, we had seen her best effort. Transcript at 202.

ARGUMENT

1. The Only Finding Supported by the Evidence was One of Complete Failure by the Respondent Mother to Cooperate or Improve

The lower court’s factual findings are reviewed on a clearly erroneous standard. *Syl. Pt.* 1, *State ex rel. DHHR v. Fox*, 218 W. Va 397, 624 S.E.2d 834 (2005)(relying on a long series of cases beginning with *In the Interest of Tiffany Marie S.*, 196 W. Va. 223, 470 S.E.2d 177 (1996).

As noted herein above, the Department of Health and Human Resources along with the multi-disciplinary team established a Family Case Plan which included in-home services, drug screening and counseling, visitations, domestic violence prevention and disassociation with criminal actors.

The respondent mother failed to keep appointments with in-home services, screamed and cursed at some of her in-home providers, and argued with others to reduce the services offered. She even told the in-home providers that she did not require their services.

The respondent mother missed or refused almost all her drug screens. She passed three in January of 2008, and failed all the rest. She denied having a drug problem. Her positive tests included PCP, cocaine, morphine, hydrocodone, oxymorphone, oxycodone, and marijuana. On the very last day of the disposition hearing, she tested positive for four of those substances. No

improvement at all.

Respondent mother missed fifteen (15) out of twenty-eight (28) scheduled visitations. She refused transportation. She told her aunt that she was quitting visitation because it was not worth her time. She missed twelve visits in a row.

Respondent mother did not improve her situation concerning domestic altercations or association with criminal actors. To the contrary, she got arrested during the pendency of the case for domestic altercations and has chosen Wendell Tolliver as her intended life-long paramour. Mr. Tolliver was known to her to have been convicted of felony drug possession, loaded gun in a vehicle, possession of stolen property and domestic battery. She admits that he has been physically aggressive toward her. She admits that his children are in DHHR custody due to his own abuse & neglect case. Despite all these things, she anticipates that he will be Isaiah's step-father and says that she will not leave Mr. Tolliver even to regain custody of Isaiah.

To summarize, the respondent mother did not correct any of the conditions and circumstances which led to removal, and her involvement during the case with Wendell Tolliver, as well as her drug use, could be said to have worsened the circumstances which led to removal. There just is no basis for a finding of any improvement by the mother. There is no basis for a finding that the mother tried to cooperate with services, and there is no basis for the finding that there is a nurturing bond between the mother and child. The mother stopped visiting on her own months ago.

The Court should have found complete and utter failure by the mother to cooperate with services or complete any portion of the improvement period.

2. The Only Plausible Conclusion on these Facts is that There is No Reasonable Likelihood of Improvement in the Near Future -

The lower court's ultimate disposition is reviewed under an abuse of discretion standard. This Supreme Court has held that it may not overturn a lower court simply because it would have decided the case differently, but does require the lower court's account of the evidence to be plausible in light of the record. *Syl. Pt. 1, In the Interest of Jamie Nicole H.*, 205 W. Va. 176, 517 S.E.2d 41 (1999); *Syl. Pt. 1, In the Interest of Tiffany Marie S.*, 196 W. Va. 223, 470 S.E.2d 177 (1996).

Here, the lower Court's account of the record is just not plausible, nor does the lower Court properly apply the standard for termination of rights to the facts at hand.

The lower Court found, in language nearly as tortured as the logic behind it, as follows, "Although the Respondent has been afforded numerous improvement periods and has shown only minimal progress and has failed to remedy the conditions that required removal of the Child from her home, the Respondent nonetheless has not been shown to be so incorrigible as to leave this Court without the firm impression that the Respondent has the capacity to reform, should she so choose." FINAL ORDER at 18, paragraph 36. This is simply not a plausible treatment of the facts in this case. Where, in the record of this case, can the lower Court point to support the contention that the mother possesses any meaningful capacity for improvement? Nowhere.

The lower Court went on to find as follows,

The Court declines at this time to terminate the parental rights of the Respondent mother to the children (sic). Notwithstanding the Respondent mother's habitual failure to cooperate with the Petitioner or this Court in attempts to remedy the conditions of abuse and neglect which have compromised the welfare of the children (sic), this Court does not find at this time that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future. The Child loves his mother and she appears to love him. She has expressed a sincere wish to be reunited with her Child, and this Court believes that there is a glimmer of hope that the Respondent mother can make diligent efforts to remedy the conditions of abuse and neglect . . ."

FINAL ORDER, page 18, paragraph 37.

The lower Court is simply wrong - so wrong that the finding is just not plausible. How, for example, did the mother express her sincere wish to be reunited with her child? Was that wish expressed by her failed drug screens, her missed drug screens, or her refused drug screens. The Respondent mother showed her true intentions when given what was termed a "last chance" improvement period by agreement of the multi-disciplinary team (which included herself and her own lawyer). She responded with abject and total failure.

The lower Court's apparent standard in this case was whether there was "a glimmer of hope"; however, "[c]ourts are not required to exhaust every speculative possibility of parental improvement before terminating parental rights . . ." In re Katie S., 198 W.Va. 79, 89 (1996) (citing In re R.J.M., 164 W.Va. 496 (1980)).

After two years, dozens of refused and missed drug screens, multiple instances of the mother refusing that she has a problem and refusing to cooperate with CPS workers and service providers, myriad lies about her drug abuse, failed drug screens, association with a criminal and abusive paramour, and her own cessation of visitation, the only plausible conclusion which can be reached is that there is no reasonable likelihood that the conditions of abuse and neglect can

be substantially corrected.

3. Isaiah A's Best Interests Require Termination of Parental Rights

The best interests of the child are foremost in cases involving the status of parental rights. In Re Lacey P., 189 W.Va. 580 (1993). All parental rights in child custody matters are subordinate to the interests of the innocent child. David M. V. Margaret M., 182 W.Va. 57 (1989).

INADEQUATE CAPACITY TO CORRECT

For the Court to terminate parental rights, there must be a finding that there is no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected in the near future, and that it is necessary for the welfare of the child that the parental rights be terminated. West Virginia Code § 49-6-5(a)(6). That means that the respondent has demonstrated an inadequate capacity to solve the problems of abuse and neglect on her own or with help. Such a finding may be based on such factors as habitual drug use which the respondent refuses to acknowledge or an unwillingness to cooperate in a family case plan designed to accommodate reunification. West Virginia Code § 49-6-5(b).

In the present case, the respondent mother obviously has demonstrated an inadequate capacity for more than two years to solve the problems of abuse and neglect even with offers or help and services. All of the service providers testified to her poor performance, bad attitude

toward change, lack of good intentions, refusal of services and general lack of capacity or motivation to become a suitable parent.

RESOLUTION AND PERMANENCY

It is necessary for Isaiah A's welfare that parental rights be terminated. The primary goal in cases involving abuse and neglect . . . must be the health and welfare of the child. *Syl Pt 3, In re Katie S.*, 198 W.Va. 79 (1996). Isaiah A. deserves "resolution and permanency" in his life and deserves the right to rely on his caretakers "to be there to provide the basic nurturance of life." *In re Deja P.*, 216 W. Va. 514, 518 (quoting *State ex rel. Amy M. V. Kaufman*, 196 W.Va. 251, 260 (1996)).

Allowing this case to remain in the posture created by the lower Court's December 29, 2008, order would lead to uncertainty and risk, with the ever present potential for upheaval and interruption of basic nurturance. *See, id.*

The lower Court essentially placed Isaiah A. in long-term foster care. Long-term foster care is without merit because the respondent mother failed to show that she would be able to correct the conditions of abuse and neglect in the future. *See, In re Katie S.*, 198 W.Va. 79, 89 (1996) (relying upon *Syl Pt. 1, In re Jeffrey R.L.*, 190 W.Va. 24 (1993)).

As in *In re Katie S.*, the respondent mother in the case *sub judice* ". . . had an adequate period to demonstrate if, with reasonable help, she was capable of caring for her young [child]." 198 W.Va at 90. The resounding answer is that she was not, and as in *In re Katie S.*, the appropriate remedy is termination of parental rights. *Id.*

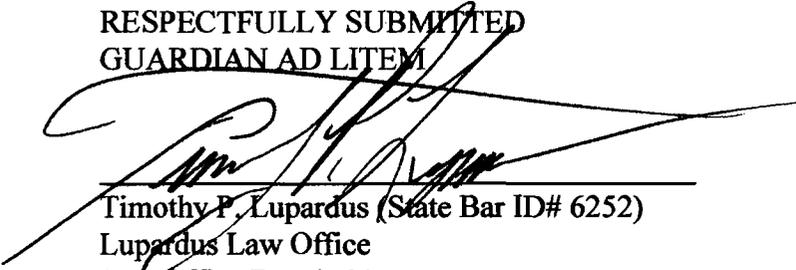
CONCLUSION

The lower Court committed reversible error which can be corrected by this Court on this appeal. The only plausible finding is that the respondent mother failed to show any capacity to make corrections to the circumstances and conditions which constituted abuse and neglect, and there is no reasonable likelihood that said conditions will be corrected in the near future. Isaiah A. deserves a final and permanent resolution. He deserves adoption by his foster parents, who are ready, willing and able.

REQUEST FOR RELIEF

The relief requested herein is reversal of the lower Court's ruling and termination of the parental rights of Alicia to the child Isaiah A.

RESPECTFULLY SUBMITTED
GUARDIAN AD LITEM



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EXHIBITS

ON

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