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OF WEST VIRGINIA

Workman, Justice, concurring:

The majority's decision is well-written and certainly reaches the right result for these children. Unfortunately, the years that the DHHR permitted these children to live in neglectful and abusive circumstances will likely have a negative impact for the rest of their lives.

Despite at least eleven referrals to the DHHR that began in 2001, it was not until June 12, 2007, that the DHHR filed an abuse and neglect petition against Rosemary and Hiram. The DHHR's 2007 petition did not occur until there were more than six years of very serious allegations of abuse and neglect, wherein children were removed from the home on four separate occasions beginning in 2003. Even then, as more fully discussed below, in its June 6, 2008, subsequent filing in the circuit court, prior to a June 19, 2008, dispositional hearing, and in spite of a mountain of disturbing evidence showing abuse and neglect toward these children, the DHHR *recommended that these children be returned to Rosemary and Hiram*. It is outrageous that seven children were left in despicable circumstances by the DHHR *for more than six years* and even then, that the DHHR still sought to place those children back in an unsafe environment.

It is important to review some of the underlying facts. As early as March 22,

2001, allegations arose that Rosemary did not have the proper medication for Brandon and, instead, was replacing it with sleeping medication. Again, on August 21, 2001, the DHHR was informed that Brandon's medication was not being filled and that it was interfering with his schoolwork. Next, on August 14, 2002, the DHHR received a referral alleging that another child, Kenny, was being emotionally abused. With regard to the allegations concerning Kenny, even though the DHHR substantiated those charges of abuse, a case was not opened and the DHHR did not pursue an abuse and neglect petition. Instead, the DHHR referred Rosemary and Hiram to Family Preservation for parenting skills.

Soon thereafter, on August 27, 2002, the DHHR received a referral alleging that there was an immediate risk to the safety of Brittany, due to a discovery that she was having suicidal thoughts and had run away from home. On that same day, the DHHR received another referral alleging physical abuse, questionable disciplinary techniques, inadequate housing, and unrealistic expectations. Just a few weeks later, on September 5, 2002, the DHHR substantiated allegations that Rosemary hit the children with cake turners, withheld food as punishment, and mentally abused the children by threatening to send them back to Baltimore, Maryland, if they were bad. In this instance, sending the children back to Baltimore meant giving six children back to their biological parents, who were described by the circuit court as current and "long-time Baltimore drug addicts."

As evidence of abuse and neglect against Rosemary and Hiram continued to

accumulate, on January 29, 2003, Brittany was removed from Rosemary's home on a juvenile petition, and returned to the home on February 26, 2003. She was again removed from Rosemary's home on September 9, 2004, and remains in the custody of the DHHR. On March 11, 2004, Kenny was removed from Rosemary's home by a juvenile petition, and was returned to the home on June 24, 2005. On September 9, 2004, the DHHR received yet another referral alleging inadequate care and emotional abuse in Rosemary's home, while on September 6, 2005, the DHHR received a referral alleging that Rosemary was refusing to send Joshua to school. On December 18, 2006, the DHHR received a referral alleging that Hiram physically and mentally abused Kenny. Kenny was temporarily removed from the home due to a juvenile petition, and the DHHR substantiated the allegations of emotional abuse. Even after all of these events, the DHHR still failed to institute a petition for abuse and neglect at this point.

On January 5, 2007, another child, Brandon, was removed from Rosemary's home and placed with the Division of Juvenile Services. On May 16, 2007, the DHHR received yet another referral, this time alleging that physical and emotional abuse was occurring in Rosemary's home. The children disclosed to DHHR employees that Hiram's sister, Serephine, her son Travis, and Travis' girlfriend, Diane, had been living at Rosemary's home, and that Hiram, Travis, and Diane had all overdosed at the home on numerous occasions. The children reported that Rosemary would give Hiram, Travis, and Diane milk when they passed out, and would only call an ambulance if she could not awaken them. The

children alleged that Serephine's children were all taken away due to her crack addiction, and that Serephine was incredibly mean to them calling them names like "slut" and "whore." During the investigation for this referral, another child, Tiffany, was discovered with self-inflicted cut marks on her arms. Despite the fact that the DHHR substantiated emotional abuse and drug abuse in the home, and even witnessed emotional and physical harm to a child, it did not file a petition for abuse and neglect until June 12, 2007.

In its June 12, 2007, petition, the DHHR stated that "the [DHHR] has recently learned that Hiram is a convicted felon" and had been found guilty of drug possession and illegal transportation of firearms. It further pointed out that Hiram's sister, Serephine, was awaiting trial on charges of driving while under the influence of drugs, and that she had a criminal background of larceny, stalking, domestic violence, obstruction, and telephone misuse. It was also reported that Serephine's son Travis, who was now living in Rosemary's home, had a criminal background consisting of arson, theft, destruction of property, obstruction, harm and injury, assault, verbal threats, and conspiracy.

The DHHR contended that remaining in the home would "further endanger the children" and that "[t]he parents have failed to benefit from previous intervention and services and the same dangerous behaviors continue to exist in the home." Thus, the DHHR stated that it "fears for their safety" and that there was "no alternative but the removal of the children from the home." Notwithstanding its earlier position, however, during a June 6,

2008, hearing before the circuit court, the DHHR had the audacity to recommend that four of the children be reunified with Rosemary and Hiram. It further recommended that a fifth child remain in the foster care system and become a ward of the state. It is important to explain that the only reason the DHHR did not recommend that the fifth child be returned to Rosemary, is that Rosemary and Hiram no longer wanted that child. Moreover, at the time of the DHHR's petition, the remaining two children had turned eighteen and were no longer under the circuit court's jurisdiction. Given the overwhelming evidence below, it is inconceivable that the DHHR could take a position that would have placed these children back in Rosemary's home.

In spite of the DHHR's misguided posture on placement of the children, following a June 19, 2008, dispositional hearing, the circuit court wisely disagreed with the DHHR and terminated Rosemary and Hiram's parental rights. The circuit court noted that this was one of the "most unusual procedural situations of any abuse and neglect case this judge has encountered in ten years on the bench." He pointed out that Rosemary, who was seventy-five-years-old at the time of her dispositional hearing, and her forty-seven-year-old son, Hiram, *were never approved as a foster home in Maryland or West Virginia*; yet, they had seven children living in their home who were instructed to call them "Mom and Dad," none of whom were related by either blood or marriage to Rosemary or Hiram. The circuit court states that there was never even a child protective service case regarding these children in Maryland, and that "[t]he various cases seemed to be handled in family court, if at all."

Incredibly, the biological parents' rights to six of the children were not even terminated until December 12, 2007, while the biological mother's rights to the seventh child are still pending in the lower court. These children were ages two to twelve when they came to West Virginia, but were ages nine to nineteen at the time of the first dispositional hearing in the circuit court. Even then, as previously discussed, the DHHR was willing to leave these children in the care of Rosemary and Hiram. Why were these children failed by West Virginia and Maryland year after year?

There were countless red flags that should have triggered swift and meaningful action by the DHHR toward these children as numerous acts of abuse and unhealthy living conditions in Rosemary's home were substantiated throughout the years. As the circuit court stated, "A deplorable pattern was revealed." The circuit court further explained that "[a]s soon as a child gets old enough to report abuse, Rosemary would file a juvenile petition to get rid of and punish the child. That child is then shunned by Rosemary and Hiram." Clearly, these children lived in deplorable physical and emotional circumstances. Nonetheless, even though it was reported that *a goat and a lamb were living inside the house*, and that the house had a significant cockroach and flea infestation problem, in addition to the myriad reports of emotional and physical abuse, the DHHR found no reason to take action during those time periods.

Rosemary and Hiram's treatment of Patricia is also troubling. As the circuit

court explained, “One of the best examples of how the DHHR, Guardian ad Litem and other MDT [Multidisciplinary team] members have overlooked the obvious is the cruel and completely unnecessary treatment of Patricia because she has Hepatitis C.” It is believed that Patricia contracted Hepatitis C as an infant when her biological mother stabbed her with a dirty needle used for drug abuse. Throughout her time in Rosemary’s home, Patricia was not allowed to use the family bathroom and was forced to use a bucket for a toilet that was located in a trailer outside of the home and without working plumbing. As the circuit court explained, “she was ostracized from the family at mealtime and in other ways [and she] was told she would die before she was sixteen.” Rosemary and Hiram treated Patricia in this despicable manner in spite of well-documented evidence in the record that they had received specific and detailed medical advice to the contrary from numerous individuals. Earlier involvement by the DHHR could have prevented this situation altogether.

It is frustrating that it was not until this appeal, and *after* the circuit court terminated the parental rights of Rosemary and Hiram in 2008, that the DHHR finally took the position that the children remain in their current placements and that visitation with Rosemary occur only at the discretion of the individual children. The DHHR is about eight years late. Where was the DHHR as continued abuse and neglect occurred with child after child, year after year?

In consideration of all of the above, as well as the countless other cases

throughout the years regarding the DHHR's responsibilities toward the children of this State, we face an epidemic in child protective services in West Virginia that will necessarily affect future generations as they almost always re-appear within the court system battered, bruised, and often broken; or as abusers in their adult families; and often as criminals. It is clear that most child protective service workers in West Virginia are dedicated and conscientious, but also overworked, and underpaid. This concurring opinion is in no way intended to denigrate their work. Instead, the intent is to issue a clarion call to the DHHR to provide child protective services with more resources and more direction in protecting children as provided in an extensive body of both statutory and case law.

It is also important to note that from the earliest time these children came to the DHHR's attention, some inquiry should have been made as to their legal status. The record reflects that Rosemary and Hiram had only a legal guardianship of the children executed by the children's biological parents and endorsed by a Maryland court. Once these children fell in West Virginia's jurisdiction by virtue of the earliest abuse and neglect allegations, the DHHR should have begun an ongoing inquiry into the legal status of the children. Case law has made clear that every child is entitled to permanency to the greatest extent the legal system can ensure it. *See State ex rel. Amy M. v. Kaufman*, 196 W.Va. 251, 470 S.E.2d 205 (1996); *In re Jonathan G.*, 198 W.Va. 716, 482 S.E.2d 893 (1996); *In re Brian D.*, 194 W.Va. 623, 461 S.E.2d 129 (1995); *In re Lindsey C.*, 196 W.Va. 395, 473 S.E.2d 110 (1995) (Workman, J., dissenting); *In re Carlita B.*, 185 W.Va. 613, 408 S.E.2d 365 (1991). The

DHHR should have acted very early to begin concurrent planning,¹ more effective intervention, and permanency in the children’s lives—permanency in “the level of custody, care, commitment, nurturing and discipline that is consistent with . . . [a] child’s best interests.” *State v. Michael M.*, 202 W.Va. 350, 358, 504 S.E.2d 177, 185 (1998). This Court observed in *Amy M.*, *supra*, that a child deserves “resolution and permanency” in his or her life and deserves the right to rely on his or her caretakers “to be there to provide the basic nurturance of life.” 196 W.Va. at 260, 470 S.E.2d at 214. Moreover, “the best interests of the child is the polar star by which decisions must be made which affect children.” *Michael K.T. v. Tina L.T.*, 182 W.Va. 399, 405, 387 S.E.2d 866, 872 (1989) (citation omitted).

This Court has consistently held that abuse and neglect cases must be given the highest priority to ensure their prompt resolution in order to provide permanency for the children involved therein. *See* Syllabus Point 1, *In re Carlita B.*, *supra*. It is a child’s natural right to have proper care, adequate nutrition, shelter, and nurturance; and to not be neglected, abused, or forced to live in a substandard, scarring environment. But in too many cases in this Court, we see children who are denied permanency by being left in legal limbo for long periods of time during their formative years. This phenomenon not only causes concern that

¹*See In re Micah Alyn R.*, 202 W.Va. 400, 409, 504 S.E.2d 635, 644 (1998) (Workman, J., concurring) (“concurrent planning for permanency should occur even where parental rights are not terminated. This should be the practice in all abuse and neglect cases, so that there is a permanency plan for children where family reconciliation efforts are not successful for whatever reason”).

this may be the tip of the iceberg, but engenders the question as to whether we must begin to reexamine child protective services in a more systemic manner.

Therefore, for the reasons set forth above, I respectfully concur with the majority opinion.