In the more than five years since my retirement from the bench, I have learned a great deal that I wish I knew when I was a sitting judge in the Colorado courts. In that time I have served as a Child Trauma Fellow, as a Senior Judge, as the Court Improvement Program’s Judge-in-Residence, and as a consultant dedicated to improving the lives of children and families in the child welfare system. I’ve gained a new perspective on how the system works or does not work when we intervene in child welfare cases.

In the medical field “iatrogenic” harm is described as an inadvertent harm that is caused by a medical intervention that is designed to help. Examples of such harms are infections from surgeries or hospitalizations, drug reactions and interactions, or medical error. Judge Michael Town of Hawaii coined the term “jurigenic harm” to represent the unintended harm that often comes from involvement with the court system.¹ I have come to believe that there are many avoidable “jurigenic” harms that come to pass in the child welfare agency and court system and that too often we are guilty of saving the body at the expense of the mind.

Let’s consider for a moment what happens to children when they enter the child welfare system. If a court case is filed, children have most often been removed from the care of their families. Children are placed with generally well-meaning strangers who know little about them, but who try their best to provide the care the children need. These foster parents’ hands are tied by a system that does not allow them to act like a parent or the child to be a “normal” child in significant ways. For example, foster parents are generally not allowed to use their judgment to give foster children an over-the-counter medication for a headache, normal aches and pains, or fever unless the foster parents first consult a physician. Often the foster child cannot participate in otherwise normal family activities such as vacations, church, or learning to drive. As a result these children are often labeled as “foster children” by their peers and endure the stigma that accompanies that label.

Foster parents are further hindered because, other than knowing a bit about the immediate reasons for removal, they have little concept of the trauma these children may have suffered throughout their brief lives and thus are ill equipped to provide the trauma informed care that the child needs. As a result, children are often mis-placed and the cycle of movement within the system begins. One sequelae of this state of limbo is educational failure. A recent report from the Colorado Department of Education relates that foster children are much less likely to graduate from high school than even homeless children. It would not be surprising to find similarly dismal educational outcomes in most other states.

This lack of stability together with the child’s historical trauma results in new behavioral issues that are often cast in terms of defiance, lack of motivation, ennui, and danger. When foster children act out they are often disciplined or drugged. Although not a problem unique to Colorado, a recent series of articles in The Denver Post reported that psychotropic drugs were prescribed to foster children in Colorado at almost 5 times the rate for children who are not in foster care. The off-label uses of these drugs were often given at almost twice the recommended dosage for adults.

A traumatized child is most often a misunderstood child. These children are often described as “problem children” or diagnosed as having oppositional defiant disorder, for example. The discipline that is often administered to these traumatized children is isolation from their families and peers, either in their foster or group homes or in juvenile detention centers. But what they really need are relationships with caring adults who understand their trauma and use proven approaches to healing their wounds.

2. Homeless children had an on time graduation rate of 50.4% while foster children had a rate of only 27.6%. See, http://www.denverpost.com/news/co/ci_26528734/colorado-foster-care-youth-less-likely-graduate-than.


4. Clearly some children require out of home care and some are not suitable for kinship care; however, there is substantial evidence that children from families where there is professional debate about the need for out-of-home care do better when they are not removed than those who were removed under similar circumstances. (See, J. Doyle, Child Protection and Child Outcomes: Measuring the Effects of Foster Care, 2007; http://www.mit.edu/~jjdoyle/ fostercare.pdf )
Conversely, parents who enter the system are confused, often angry or remorseful, and always fearful of what is in store for them and their children. These parents often represent the previous generation of children who have not been provided the tools they need to succeed in parenting or in life. If we ignore the origins of their deficits we cannot hope to effectively remEDIATE their parenting and provide their children with the stable and caring homes they require.

In an aphorism most often attributed to Albert Einstein, “insanity” is defined as doing the same thing over and over again and expecting different results. As legal professionals, we know that the system we administer or the children and parents we represent deserve more. Ethically we cannot be satisfied with the outcomes produced by our system. Yet too frequently we “go along to get along” and continue to apply the same remedies that have failed in the past.

The “Reasonable Efforts” Tool

The “reasonable efforts” requirements in federal and state law have been around since the enactment of the Adoption Assistance and Child Welfare Act of 1980. Simply stated, child protection agencies are required to make reasonable efforts to prevent out-of-home placement and also must make such efforts to eliminate the continued need for removal of children from their homes. Although there are limited exceptions to the requirement based on aggravating circumstances, generally the findings must be made throughout the life of the case. In 1997, with the enactment of the Adoption and Safe Families Act, agencies were also required to make reasonable efforts to finalize the permanency plans of children who were placed out of the home. The failure to make such efforts would result in a loss of federal dollars used to support the system.6

Although the courts did not ask for this responsibility, the legislation provided for judges to be the enforcer of the reasonable efforts requirements. In order to keep the flow of federal dollars intact courts were to make findings that the agency had fulfilled this responsibility. The problem, however, was that the legislation did not provide a definition of what constitutes “reasonable efforts.” What was “reasonable” was to be decided on a case-by-case basis, taking into account the specific needs of the children and the family.7 The Child Welfare Information Gateway offers some guidance regarding what constitutes reasonable efforts. They are referred to as “accessible, available and culturally appropriate services that are designed to improve the capacity of families to provide safe and stable homes for their children...”8 In addition, some states have enacted definitions of their own.

I vividly remember a statewide training for Colorado judicial officers that was held early in 1981 when I was a wet-behind-the-ears newly appointed magistrate. We were informed at that time that we must make “reasonable efforts” findings in order to keep the much needed money flowing. There may have been a discussion of a definition or of the need for evidence to support the finding, but I don’t remember that part. The emphasis was clearly upon the need to keep the money flowing.

Over the years, because of the crush of overburdened dockets and the comfort found in repetition, judges such as myself have often recited the reasonable efforts mantra without giving sufficient thought to what it really means to make those efforts. Attorneys for the state have agreed and, too frequently counsel for parents have acquiesced. In summary, the “reasonable efforts” tool has been under-utilized as a means of improving outcomes for children…

6. 45 CFR §1356.21(b)(1); 45 CFR 1356.21(b)(2)(ii).  
7. Child Welfare Policy Manual, Section 8.3C4 Title IV-E.  
individual families and to make system improvements that benefit all.

Judge Leonard Edwards makes this point emphatically in his new book Reasonable Efforts: A Judicial Perspective. Although the book is written from a judicial perspective, the book is an extremely valuable tool for legal practitioners. It provides a detailed history on why the federal legislation was necessary as well as a comprehensive review of how the states have responded in statute and caselaw. In addition, it outlines recurring factual situations that may give rise to reasonable efforts arguments. The book should be required reading for every legal professional involved in the child welfare system.

Using the Tool

As revealed in Judge Edwards’ state-by-state review, the meaning of “reasonable efforts” is still developing. In order to find clarity, it is necessary that legal professionals appearing in any dependency court bring facts to the table and use their legal training to present those facts in a way that advances their client’s position about whether or not reasonable efforts have been made. Our Rules of Professional Conduct require no less. The ABA’s Model Rules of Professional Conduct require the lawyer act as advocate to zealously represent the client’s interests and in all professional functions to be competent, prompt and diligent. Using this standard, although the lawyer has a responsibility to the client to pick his/her battles in the best interests of the client, “going along to get along” often represents a breach of duty to the client.

So how can the legal professionals bend the curve so that the judicial officer is more likely to carefully consider whether the particular actions of the agency constitute “reasonable efforts?” First, advocates must raise the issue. As the Judge-in-Residence for Colorado’s Court Improvement Program I visited every judicial district in the state and interviewed the various stakeholders. I always asked parent counsel whether they made reasonable efforts arguments. Many said that they had given up because they never succeeded. Judges were asked the question about whether lawyers ever raised the issue. Their reply was that they wished the issue would be raised more often.

This cycle of frustration can be broken by regularly raising the issue and demanding a fact-based response. For example, if a judicial officer recites the reasonable efforts mantra without making specific findings, it is appropriate and a sign of effective advocacy to ask the court for specific findings about how the agency has demonstrated reasonable efforts. Further, if the attorney believes the court’s findings to be in error, it is incumbent upon the lawyer to promptly seek relief from a higher court.

If lawyers appearing before a judicial officer always ask for specific findings, it is likely the judge will expect the request, will consider the reasonable efforts finding in a more painstaking manner, and will make specific findings without the prompt from counsel. In this way, each legal professional becomes an “agent of accountability” to assure that the law is followed and that their client achieves the best outcome the system can produce.

In my travels around Colorado, I have asked guardians ad litem about how often they raised a reasonable efforts argument. Many suggested that this was an argument that should primarily be made by parent’s counsel. Given the discussion of unacceptable child and family outcomes set forth above, and the premise that children belong with families, it is clear that the reasonable efforts tool is one that can serve the children well if raised in a timely manner by guardians ad litem. Too often the issue is seriously considered for the first time at termination hearings. This is too late. This delay results in parents becoming disengaged and children becoming estranged from their parents, siblings, schools and communities. Children remain in limbo. This delay also results in parents appealing actions of the agency that are not supported by findings and in children remaining in limbo. It is too late when litigation must begin anew if the motion is denied or if a termination order is overturned on appeal because of a lack of support for a reasonable efforts finding.

Being an agent of accountability not only means that a better record of reasonable efforts will be made but that agency practice will be improved when a “no reasonable efforts” finding is threatened. As Judge Edwards regularly points out, judicial officers must make “no reasonable efforts” findings when the record supports...
such a finding to ensure the agency is doing its job. However, there is an “art” to making those findings so that in most cases the agency has an opportunity to conform its services to what is reasonable and avoid the loss of funds that the community desperately needs.\(^\text{12}\)

**Collective Action**

History has shown that the most effective dependency court systems are those that assemble and nourish a robust group of agency, community and legal stakeholders to collaboratively promote a mission to improve the child welfare and court system. Courts designated as Model Courts under the Child Victims of Crime Act are required to practice this approach. Over the years, the model has been proved to be effective in moving our notion of best practice forward.\(^\text{13}\) These collaboratives typically operate through consensus and are incubators of ideas to improve outcomes for children and families. Although typically assembled and led by a judicial officer, lawyers involved in the child welfare court system are essential members whose contributions are invaluable.

At trainings I conduct, I often ask participants to think back over the time that they have been involved in the child welfare system and consider the progress we have made in creating a more humane system for children and families. While the baby steps we have taken over the years may not look like much when we view them in isolation, when viewed collectively the incremental changes made to the system take on larger dimensions.

If your system looks essentially the same when viewed over time or hasn’t made the progress toward better results that you expect, it is stuck in a rut and needs to be jostled out of complacence through your advocacy. Whether we are judges or attorneys, we must recognize that it is our job to make people a little uncomfortable. Positive change happens in this manner. For legal professionals working within this system the reasonable efforts tool provides the best means to move the needle and to give children and families what they need instead of “what we got.” Children and families cannot wait. Nobel Prize winning poet Gabriella Mistral said it best when she wrote:

> We are guilty of many error and faults
> but our worst crime is abandoning the children,
> neglecting the fountain of life.
> Many of the things we need can wait.
> The child cannot.
> Right now is the time bones are being formed,
> blood is being made,
> senses are being developed.
> To the child we cannot answer “Tomorrow.”
> The child’s name is “Today.”

Carpe diem!
Practice Tips: Q & A on Compassion Fatigue

by Françoise Mathieu, MEd, CCC

What is compassion fatigue?
Compassion fatigue (CF) has been described as the "cost of caring" for others in emotional pain (Figley, 1982). The helping field has gradually begun to recognize that workers are profoundly affected by the work they do, whether it is by direct exposure to traumatic events (for example, working as an ambulance driver, police officer, emergency hospital worker); secondary exposure (hearing clients talk about trauma they have experienced, helping people who have just been victimized, working as child protection workers) and the full gamut in between such as working with clients who are chronically in despair, witnessing people’s inability to improve their very difficult life circumstances or feeling helpless in the face of poverty and emotional anguish.

The work of helping requires helping professionals to open their hearts and minds to their clients and patients. Unfortunately, this very process of empathy is what makes helpers vulnerable to being profoundly affected and even possibly damaged by their work.

What is the difference between compassion fatigue, vicarious trauma and burnout?

These three terms are complementary and yet different from one another. While compassion fatigue refers to the profound emotional and physical erosion that takes place when helpers are unable to refuel and regenerate, the term vicarious trauma (VT) was coined by Pearlman & Saakvitne (1995) to describe the profound shift in world view that occurs in helping professionals when they work with clients who have experienced trauma: helpers notice that their fundamental beliefs about the world are altered and possibly damaged by being repeatedly exposed to traumatic material.

Burnout is a term that has been used since the early 1980s to describe the physical and emotional exhaustion that workers can experience when they have low job satisfaction and feel powerless and overwhelmed at work. However, burnout does not necessarily mean that our view of the world has been damaged, or that we have lost the ability to feel compassion for others. We have worked with individuals who were not in the helping field who still felt severe work-related burnout (e.g. someone working as an administrative assistant in a toxic work environment). Most importantly, burnout can be fairly easily resolved: changing jobs can provide immediate relief to someone suffering from job-related burnout.

What are some of the signs of CF and VT?

Researchers have discovered that helpers, when they are overtaxed by the nature of their work, begin to show symptoms that are very similar to their traumatized clients: difficulty concentrating, intrusive imagery, feeling discouraged about the world, hopelessness, exhaustion, irritability, high attrition (helpers leaving the field) and negative outcomes (dispirited, cynical workers remaining in the field, boundary violations) many of which affect the workplace and can create a toxic work environment.

What factors contribute to CF/VT and burnout?

There are many reasons for which helping professionals can develop compassion fatigue and vicarious trauma. These are described in...

**THE INDIVIDUAL**

Your current life circumstances, your history, your coping style and your personality type all affect how CF may impact you. Most helpers have other life stressors to deal with: many are in the “sandwich generation” meaning that they take care of both young children and aging parents in addition to managing a heavy and complex workload. Helpers are not immune to pain in their own lives and, in fact, some studies show that they are more vulnerable to life changes such as divorce and addictions than people who do less stressful work.

**THE SITUATION**

Helpers often do work that other people don’t want to hear about, or spend their time caring for people who are not valued or understood in our society (for example, individuals who are homeless, abused, incarcerated or chronically ill). We also live in a society that glamorizes violence and does not adequately fund efforts to reduce or prevent violence in our society. The working environment is often stressful and fraught with workplace negativity as a result of individual CF, burnout, and general unhappiness. The work itself is also very stressful, dealing with clients/patients who are experiencing chronic crises, difficulty controlling their emotions, or those who may not get better.

**What can be done?**

Over the past decade, organizational health researchers have been busy studying the most effective strategies to reduce, mitigate and prevent CF and VT in helping professionals. Here is what has been shown to be most effective:

**WORKING IN A HEALTHY ORGANIZATION**

Studies show that “who you work for” is one of the biggest determinants of employee wellness. This means having access to a supportive, flexible manager who is open to regular workload assessments in order to reduce trauma exposure, a manager who encourages staff to attend ongoing professional education and who provides timely and good quality supervision as needed. Employees who had more control over their schedule reported a higher rate of job satisfaction overall. Reducing hours spent working directly with traumatized individuals was the single most effective way of reducing VT.

**PERSONAL STRATEGIES**

The top personal strategies identified were developing and maintaining a strong social support both at home and at work, and increased self-awareness through mindfulness meditation and narrative work such as journaling. Regular self-care is unfortunately often an afterthought for busy helping professionals. Remember that compassion fatigue is a process that develops over time and so is healing from its effects. Some people can return to a full well of resources by taking a holiday or going for a massage but most of us need to make life changes and put our own health and wellness at the top of the priority list. Helpers need to develop stress resiliency skills so they can continue to be able to do this challenging work.

**What if those strategies aren’t enough?**

Compassion fatigue and burnout can lead to very serious problems, such as depression, anxiety and suicidal thoughts. When this happens you deserve to have help. Talk to your physician about options such as counselling.

**I am a manager, how can I help support my staff?**

- Introduce the topic of compassion fatigue at a staff meeting. Discuss it as an occupational hazard, something that happens to those who do their jobs well, and have a group discussion about ways to deal with it around the workplace such as peer supervision and clinical debriefings. Your staff may have other great suggestions.
- Offer professional development for your staff on topics related to trauma-informed care and other skill-building strategies.
- Offer counselling as part of your benefits package and encourage people to use the service. Be sure to use non-judgmental language and explain all aspects related to confidentiality.
- Bring in compassion fatigue specialists to speak to your team or provide opportunities for staff to attend a CF workshop.
- Provide supportive supervision for your staff and include CF in your discussions, but don’t be insulted if they don’t want to speak to you directly about it.
- Get some support for yourself — it’s lonely at the top! Many managers we speak to tend to be quite isolated and have very stressful jobs themselves. Join an online or teleconference support group for managers. This can often be a good way for busy managers to receive support.
The holidays are approaching, and often bring additional stress for us and the families we serve. Any tips for managing this time of year?

There are several issues that may arise during the holiday season.

GUILT

Sometimes, the holidays can elicit feelings of guilt for helping professionals who work with clients who have so much less than they do. We may go home to a lavish holiday meal, and feel keenly aware of the fact that some of our clients will not be doing the same. On the positive side, it can also provide us with an opportunity not to take our privileges for granted, prompt us to give back, in some way, to our community. It may allow us to teach our children about the inequities of our society and the importance of volunteering and doing our part. It’s also ok to enjoy yourself and take some time off without the guilt, because if we don’t regenerate and replenish ourselves, we are of no use to anyone else, especially not to the individuals who look to us for support and expertise. Taking time to refuel is the best thing we can do to ensure that we can do this work for many years to come, and are able to do it well.

LIMITED RESOURCES

Another challenge that the holidays present is that we may be working with less resources than we normally do — more people are on leave, some community referral agencies may be closed or have shorter hours etc., and some of your clients may be left without their usual support structures. Setting clear limits on what you can do becomes very important in circumstances like this — you can’t be all things to all people, and yet you want to be able to support them in the way that they absolutely deserve. It might be a good idea to prepare a list of after hours and holidays resources so that you can provide your clients with a go to list and be able to leave for your own holidays if you are taking time off. This is usually best done ahead of time, when you have a few minutes to call around and see what’s available. I’ve also found that many helping professionals are not at well connected into community resources due to lack of time — they haven’t had a chance to network or to stay on top of what’s available out there. Getting together with your colleagues to pool information about this is a good idea.

JUGGLING TOO MUCH

In my talks on work-life balance, I often say that I hold Martha Stewart single-handedly responsible for causing massive stress to North American women (and maybe some men too) — I’m joking, of course, but I have seen so many people, women in particular, get caught up in the “perfect holiday” trap of feeling that they need to decorate the house, get gifts for everyone, cook gourmet meals, make gifts for teachers, coaches, etc... Adding all of these responsibilities to an already busy work schedule can cause unnecessary stress. Sometimes, we need to reassess the “musts” and learn to delegate, or scale things down. One year, my sisters-in-law and I decided that we were no longer going to be doing gift exchanges with each other’s families. It was just getting too expensive, too stressful and too complicated. We now skip the gifts and focus on making some delicious food together. It was a huge relief for me to see the “to do” list shrink dramatically overnight. And it was easier on the wallet, too.

Bozos on the Bus

The truth is that many of us who work in this field have less than picture-perfect lives ourselves — maybe we are going home to a dysfunctional situation too, and old wounds may get stirred up again during the holidays — as someone once said “We’re all bozos on the bus.” Make sure you are taking good care of yourself during this time, try to keep things simple and take a deep breath. In the end, what really matters is spending time with those we love. The rest is all “stuff.”

Sources:


Case

*In re B.H. and S.S.*

by Arielle Hanser,
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JD Candidate 2016

The Supreme Court of Appeals of West Virginia considered whether the circuit court erred in (1) granting primary custodial responsibility of B.H. and S.S. to their biological father, respondent Randy H., Jr. ("the father"); (2) granting petitioner Krista H. ("the mother") unsupervised visitation with the children; and (3) dismissing the proceeding from the circuit court’s docket. The mother appealed the circuit court’s Corrected Disposition Order. After reviewing the record the Court found no error in the circuit court’s order. The Court affirmed the circuit court’s award of primary custody of the children to the father and unsupervised visitation to the mother, holding (1) the level of a parent’s compliance with the terms and conditions of an improvement period is just one factor to be considered in making the final disposition in a child abuse and neglect proceeding; (2) evidence supported finding that the mother had not made sufficient improvement to justify return of her children to her custody; (3) the circuit court’s adoption of the Multi-Disciplinary Team’s ("MDT") Parenting Plan serves the best interests of B.H. and S.S.; and (4) the mother was provided ample opportunity during her improvement period to demonstrate she had learned how to better parent and protect her children.

On December 5, 2011, the West Virginia Department of Health and Human Resources ("the Department") filed a Petition to Institute Child Abuse and Neglect Proceedings ("Petition") against the mother regarding her conduct involving her minor children, B.H. and S.S. According to the Department’s allegations, the mother was in a personal relationship with John Bailey, a registered sex offender. B.H., S.S., and their mother lived with Mr. Bailey for a period of time at Mr. Bailey’s friend’s house. This friend was Andrew Oldaker, another registered sex offender. As a result of their mother’s association with these men, and other sex offenders, B.H. and S.S. were sexually abused on multiple occasions. The Department took emergency custody of B.H. and S.S. On December 6, 2011, the circuit court ordered that the legal

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4. *Id.* at 752.
5. *Id.*
6. *Id.* at 753.
7. *Id.*
8. *Id.* at 746.
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
and physical custody of the girls remain with the Department.13

During the adjudicatory hearing, the mother stipulated, inter alia, that (1) she and her children were residing with John Bailey, a registered sex offender; (2) she was aware that John Bailey and Andrew Oldaker were registered sex offenders and she failed to protect her children by allowing them to be around John Bailey and Andrew Oldaker; and (3) that as a result of being around John Bailey and other individuals who are registered sex offenders her children were subjected to sexual abuse.14 On January 17, 2012, the circuit court entered an order adjudicating the children abused and neglected.15

The court also awarded the mother a six-month post-adjudicatory improvement period.16 The goals of this improvement period were for her to learn to improve her own self-esteem, as well as better parent and protect her children.17 During the review hearings that followed, Child Protective Services (“CPS”) worker Amanda Damron reported that the mother had knowingly started dating and living with another sex offender, Patrick Trembly, and that the mother indicated her belief that Mr. Trembly was innocent.18 Ms. Damron continued to express concerns regarding the mother’s lack of ability to be protective of her children in the future.19

In the February 5, 2013 dispositional hearing, the mother testified that during her improvement period she learned why she had been attracted to the sex offenders and her self esteem had improved. The father testified that while B.H. and S.S. had been living with him, his wife, and his other daughter for approximately four months, the children’s school attendance and grades had been excellent, and the girls both felt safe knowing they had a stable home.20 In addition, the Department’s counsel advised that the best interests of the children would be served by allowing the children to remain with their father and terminating the mother’s custodial rights while granting her visitation.21 The GAL agreed, but concluded that the children should receive frequent and liberal visitation with their mother.22 The circuit court entered its first Dispositional Order on March 13, 2013. The court terminated the mother’s custodial rights and adopted the Parenting Plan proposed by the MDT, establishing the father as the primary residential parent and giving the mother unsupervised visitation with the children.23 While the appeal was pending, the circuit court entered a Corrected Disposition Order.24 In this order, the court did not terminate the mother’s custodial rights, finding that the mother had “substantially complied” with the terms and conditions of her improvement period.25 But the court also found that it was in the children’s best interest that their father remain their primary residential parent.26 The court adopted the MDT’s proposed Parenting Plan and dismissed the proceeding from its docket.27

The Court reviewed de novo the circuit court’s disposition order entered upon the petition for the termination of the mother’s rights.28 The Court noted that findings of fact and conclusions of law as to whether the children are abused or neglected “shall not be set aside by a reviewing court unless clearly erroneous.”29 The Court began its analysis of the mother’s assertion by stating, “Although parents have substantial rights that must be protected, the primary goal in cases involving abuse and neglect, as in all family law matters, must be the health and welfare of the children.”30

The Court first considered whether the mother had made sufficient improvement during the post-adjudicatory improvement period as “an opportunity… to modify… her behavior so as to correct the conditions of abuse and… neglect with which… she had[been] charged.”31

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13. Id.
14. Id. at 747.
15. Id.
16. Id.
17. Id.
18. Id.
19. Id.
20. Id. at 749.
21. Id.
22. Id.
23. Id.
24. Id.
25. Id.
26. Id.
27. Id.
28. Id.
29. Id. at 750 (citing In re Emily T., 717 S.E.2d 873, 875 (W. Va. 2011)).
30. 754 S.E.2d at 750 (citing In re Katie S., 479 S.E.2d 589, 592 (W. Va. 1996)).
31. 754 S.E.2d at 750 (citing In re Emily T., 540 S.E.2d 542, 551 (W. Va. 2000)).
Applying In re Frances J.A.S., the Court stated that the pivotal question is what disposition is consistent with the best interests of the child, rather than the question of whether the parent has successfully completed his or her assigned tasks during the improvement period. The Court held the level of a parent’s compliance with the terms and conditions of an improvement period is just one factor for consideration when making the final disposition in a child abuse and neglect proceeding.

The Court then considered whether the evidence supported finding that the mother had made sufficient improvements to justify the return of her children to her custody. The Court noted continuing concerns that the mother would become involved with sex offenders and continue her efforts to expose her daughters to the associated risks. The Court recognized the difficulty faced by the circuit court in determining whether the mother had made sufficient improvement “in the context of all the circumstances of the case to justify the return of the child[ren].” The Court determined that the circuit court received beneficial advisement throughout the improvement period review hearings. This advisement articulated the contrast in the care provided by the father versus the mother. The circuit court found such evidence did not support returning the children to their mother.

In considering this evidence, the Court held the circuit court did not err in finding the evidence supported that the mother had not made sufficient improvement to justify the return of her children to her custody.

The Court next considered whether the circuit court’s adoption of the MDT’s Parenting Plan served the best interests of B.H. and S.S. The Court stated, “To justify a change of child custody, in addition to a change in the circumstances of the parties, it must be shown that such change would materially promote the welfare of the child.” Ms. Damron acknowledged that the children excelled both in school and in after-school activities while the children were in the father’s custody, and were provided a safe and stable environment. The Court affirmed the circuit court’s conclusion that the best interests of the children would be served through the MDT’s Parenting Plan, which allowed the children to foster a bond with their mother through liberal unsupervised visitation, to be safe in a stable environment, and for their welfare to be promoted while in the primary custody of their father.

Finally, the Court addressed whether the mother had sufficient unsupervised visitations to enable her to demonstrate what she learned throughout the improvement period. The Court acknowledged the circuit court had awarded the mother unsupervised visitation in December of 2012, despite the continuing concerns regarding her ability to properly parent and protect her children.

The Court found she had ample opportunity during her improvement period to demonstrate what she learned regarding better parenting decisions and better choices in her associations in order to better protect her children. The Court concluded the circuit court had not erred in the amount of unsupervised visitations it had provided to the mother during her improvement period. The Court affirmed the entry of the circuit court’s Corrected Disposition Order, which awarded primary custody of B.H. and S.S. to their father with liberal visitation to their mother.

The importance of this case stems from the difficulties faced by many courts when determining whether and to what extent a parent has sufficiently adhered to their disposition order. When making these determinations, courts must find a balance between preserving the Constitutional right of parents to their children and ensuring the best interests of the child are being promoted. Perhaps more courts should rule in alignment with In re B.H. and S.S., where, instead of terminating the rights of a parent when determining whether the parent sufficiently adhered to their disposition order is difficult, the court seeks an alternative approach that attempts to find a middle ground in this not-so-simple balance of interests.
Congrats to our New CWLS!

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or contact Daniel Trujillo, 303-864-5359, or Daniel.Trujillo@childrenscolorado.org

I’ve been given my mission: “facilitate the work of the newly re-established NACC Board Policy Committee and go change the world”. While it may be a tall order, the good news is that I don’t have to do it all on my own. By its very nature, a committee is a group of (hopefully) committed, passionate individuals working together to achieve a common goal (perhaps even, to change the world). In fact, Margaret Mead knew this possibility long before I did as reflected in her famous quote, “never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it’s the only thing that ever has.”

One of the many things I have learned from the child welfare community is that we ARE a (relatively) small group of thoughtful, committed citizens and many of us DO want to change the world. So here is my call fellow child advocates, as we set out to change the world don’t be surprised if we come knocking on your door for assistance, advice, or partnership. And likewise, don’t be afraid to knock on our door seeking the same. Together, let’s change the world.
Thank you to our Platinum Lifetime, Gold, and Silver members!

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NACC Mission

As a multidisciplinary membership organization, we work to strengthen legal advocacy for children and families by:

- Ensuring that children and families are provided with well resourced, high quality legal advocates when their rights are at stake
- Implementing best practices by providing certification, training, education, and technical assistance to promote specialized high quality legal advocacy
- Advancing systemic improvement in child-serving agencies, institutions and court systems
- Promoting a safe and nurturing childhood through legal and policy advocacy for the rights and interests of children and families

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