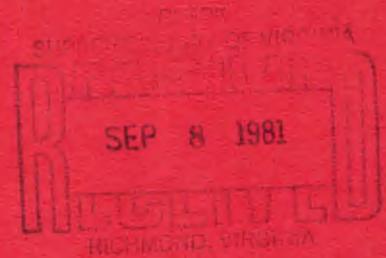


223 Va 235

IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND



8

Record No. 802043

LORENE P. HARRIS,
Appellant

v.

LYNCHBURG DIVISION OF SOCIAL SERVICES,
Appellee

Record No. 802047

ELI WOODSON,
Appellant

v.

LYNCHBURG DIVISION OF SOCIAL SERVICES,
Appellee

JOINT APPENDIX

J. BARRETT JONES
Virginia Legal Aid Society, Inc.
901 Main Street
P.O. Box 427
Lynchburg, Virginia 24505

Counsel for Appellant Harris

CURTIS M. COWARD
Bell, Coward, Morrison & Spies
715 Court Street
P.O. Box 739
Lynchburg, Virginia 24505

Counsel for Appellant Woodson

WILLIAM M. PHILLIPS
City Attorney, Lynchburg
WALTER C. ERWIN, III
Assistant City Attorney,
Lynchburg
P.O. Box 60, City Hall
Lynchburg, Virginia 24505

Counsel for Appellee

JOHN J. O'KEEFFEE, Jr.
1022 Court Street
Lynchburg, Virginia 24505

Guardian ad litem

IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

Record No. 802043

LORENE P. HARRIS,
Appellant

v.

LYNCHBURG DIVISION OF SOCIAL SERVICES,
Appellee

Record No. 802047

ELI WOODSON,
Appellant

v.

LYNCHBURG DIVISION OF SOCIAL SERVICES,
Appellee

JOINT APPENDIX

J. BARRETT JONES
Virginia Legal Aid Society, Inc.
901 Main Street
P.O. Box 427
Lynchburg, Virginia 24505

Counsel for Appellant Harris

CURTIS M. COWARD
Bell, Coward, Morrison & Spies
715 Court Street
P.O. Box 739
Lynchburg, Virginia 24505

Counsel for Appellant Woodson

WILLIAM M. PHILLIPS
City Attorney, Lynchburg
WALTER C. ERWIN, III
Assistant City Attorney,
Lynchburg
P.O. Box 60, City Hall
Lynchburg, Virginia 24505

Counsel for Appellee

JOHN J. O'KEEFFEE, Jr.
1022 Court Street
Lynchburg, Virginia 24505

Guardian ad litem

TABLE OF CONTENTS

Proceedings in the Juvenile and Domestic Relations
District Court for the City of Lynchburg

Petition Re Eli Woodson Harris, January 28, 1980.	1
Petition Re Gwendolyn Darshella Harris, January 28, 1980.	3
Pre-Hearing Report of Lynchburg Division of Social Services, February 27, 1980.	5

Proceedings in the Circuit Court
for the City of Lynchburg

Order Re Eli Woodson Harris, September 23, 1980.	9
Order Re Gwendolyn Darshella Harris, September 23, 1980.	11
Stipulated Written Statement.	13

Proceedings in the Supreme Court of Virginia

Assignments of Error of Appellant Woodson.	20
Assignments of Error of Appellant Harris.	21

IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT OF THE CITY OF
 Lynchburg, Virginia

and a Child under eighteen years of age, to wit:

1. CHILD'S NAME: HARRIS, ELI WOODSON	2. DATE OF BIRTH: 09-05-76	3. AGE: 3yrs	SEX: M X
4. CHILD'S ADDRESS: DSS Foster Home- c/o 701 Hollins Street; Lynchburg, Virginia			
5. FATHER'S NAME AND ADDRESS: c/o Mabel Woodson Woodson, Eli- 1618 3rd Street; Lynchburg, Virginia			
6. MOTHER'S NAME AND ADDRESS: Harris, Lorene Patrice- Correctional Center for Women; Goochland, Virginia			
7. GUARDIAN/LEGAL CUSTODIAN OR PERSON IN LOCO PARENTIS AND ADDRESS: Lynchburg Division of Social Services- 701 Hollins Street; Lynchburg, Virginia			
8. SPOUSE OF JUVENILE AND ADDRESS:			
9. OTHER(S) AND ADDRESS(ES): McNeil, Mary C. J.- DSS- 701 Hollins Street; Lynchburg, Virginia			
10. Child held in CUSTODY <input type="checkbox"/> Yes <input type="checkbox"/> No			
11. Place of Detention or Shelter Care			
12. Date and Time Taken into Custody/...../..... :..... m.		13. Date and Time Placed in Detention or Shelter Care/...../..... :..... m.	

The undersigned petitioner respectfully represents to the Court to the best of his/her knowledge, information and belief that the above named child is within the purview of the Juvenile and Domestic Relations District Court and that, within this city/county the child:

was committed to the Lynchburg Department of Social Services on February 7, 1977. Child remained in foster care until April, 1977 when he was returned to his parents home with services being offered to the parents. On October 7, 1977, child was returned to foster care because the parents were unable to provide adequate care for him and he has remained in foster care since that time. Pursuant to Section 16.1-283 C 2 of the 1950 Code of Virginia as amended, the parents have been unable to remedy substantially the conditions which led to the child's foster care placement and that reasonable and appropriate efforts by DSS have been made to remediate said conditions without success. It appears at this time that it is for the child's best interest, and that of the State, that he be separated permanently from his parents and that all residual parental rights, including but not limited to the right of visitation, consent to adoption, the right to determine religious affiliation and the responsibility for support, be terminated and that the child be committed to the Lynchburg Department of Human Services, Division of Social Services with permission to be placed for adoption.

Information in the following items is not known to the petitioner:

No. 8,10,11,12,13

WHEREFORE, your Petitioner prays: That proper process issue; That said child and the persons having her custody and control be summoned to appear before this Court; and That this Court enter such orders and judgements as the Court deems fit and proper in accordance with the law and which will serve the purpose and intent of the Juvenile and Domestic Relations District Court Law.

January 28, 1980

DATE

Mary C. J. McNeil

PETITIONER'S SIGNATURE

Mary C. J. McNeil

PETITIONER'S NAME (PRINT OR TYPE)

c/o ISS- 701 Hollins Street; Lynchburg, Virginia

PETITIONER'S ADDRESS

Sworn and subscribed before me this 28th day of January, 1980

Patricia A. Parrish

Deputy Clerk

TITLE

CDL OF VA 116.1-263 (7/77)

IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT OF THE CITY OF
 Lynchburg, Virginia

Present a Child under eighteen years of age, to wit:

CHILD'S NAME: HARRIS, ELI WOODSON	2. DATE OF BIRTH: 09-05-76	3. AGE: 3yrs	SEX: M X
CHILD'S ADDRESS: DSS Foster Home- c/o 701 Hollins Street; Lynchburg, Virginia			
5. FATHER'S NAME AND ADDRESS: c/o Mabel Woodson Woodson, Eli- 1618 3rd Street; Lynchburg, Virginia			
MOTHER'S NAME AND ADDRESS: Harris, Lorene Patrice- Correctional Center for Women; Goochland, Virginia			
7. GUARDIAN/LEGAL CUSTODIAN OR PERSON IN LOCO PARENTIS AND ADDRESS: Lynchburg Division of Social Services- 701 Hollins Street; Lynchburg, Virginia			
8. SPOUSE OF JUVENILE AND ADDRESS:			
9. OTHER(S) AND ADDRESS(ES): McNeil, Mary C. J.- DSS- 701 Hollins Street; Lynchburg, Virginia			

10. Child held in CUSTODY Yes No

11. Place of Detention or Shelter Care

12. Date and Time Taken into Custody/...../..... :..... m.

13. Date and Time Placed in Detention or Shelter Care/...../..... :..... m.

The undersigned petitioner respectfully represents to the Court to the best of his/her knowledge, information and belief that the above named child is within the purview of the Juvenile and Domestic Relations District Court Law in that, within this city/county the child:

was committed to the Lynchburg Department of Social Services on February 7, 1977. Child remained in foster care until April, 1977 when he was returned to his parents home with services being offered to the parents. On October 7, 1977, child was returned to foster care because the parents were unable to provide adequate care for him and he has remained in foster care since that time. Pursuant to Section 16.1-283 C 2 of the 1950 Code of Virginia as amended the parents have been unable to remedy substantially the conditions which led to the child's foster care placement and that reasonable and appropriate efforts by DSS have been made to remediate said conditions without success. It appears at this time that it is for the child's best interest, and that of the State, that he be separated permanently from his parents and that all residual parental rights, including but not limited to the right of visitation, consent to adoption, the right to determine religious affiliation and the responsibility for support, be terminated and that the child be committed to the Lynchburg Department of Human Services, Division of Social Services with permission to be placed for adoption.

The information in the following items is not known to the petitioner:

No. 8,10,11,12,13

WHEREFORE, your Petitioner prays: That proper process issue; That said child and the persons having his ~~her~~ custody and control be summoned to appear before this Court; and That this Court enter such orders and judgements as the Court deems fit and proper in accordance with the law and which will serve the purpose and intent of the Juvenile and Domestic Relations District Court Law.

January 28, 1980
DATE

Mary C. J. McNeil
PETITIONER'S SIGNATURE

Mary C. J. McNeil
PETITIONER'S NAME (PRINT OR TYPE)

c/o DSS- 701 Hollins Street; Lynchburg, Virginia
PETITIONER'S ADDRESS

Sworn and subscribed before me this 28th day of January, 19 80

Patricia A. Parrish
Deputy Clerk
TITLE

VA 116 1-263 (7/77)

LYNCHBURG DIVISION OF SOCIAL SERVICES
PRE-HEARING REPORT
FEBRUARY 27, 1980

re: Termination of residual parental rights
of: Loren Patrice Harris
and Eli Woodson

to: Eli Woodson Harris
D.O.B. 9-5-76
and
Gwendolyn Darshella Harris
D.O.B. 7-24-77

for the purpose of Adoptive Placement

I. CURRENT PROBLEM:

The above named children have been continuously in foster care since October, 1977, two years and four months. The mother is currently in jail serving a five year sentence for assault. Return to her care within a reasonable period of time does not seem likely. The putative father has been out of jail for approximately ten months. After being contacted by the Lynchburg Division of Social Services on February 5, 1980, he expressed a desire to have one of the children (he did not specify which one) placed with his mother, in lieu of adoptive placement. It is the position of the Lynchburg Division of Social Services that as there are no ties by these children to these parents because of prolonged separation beginning at such an early age, the children, in order to be assured of permanency as early as possible, should be freed for adoptive placement.

II. PREVIOUS PROBLEMS:

1. Moncil Aileen Harris, D.O.B. 12-14-73, entered foster care under parental entrustment on February 26, 1974. Another entrustment was signed to extend foster placement until June 26, 1974. As Miss Harris was still unable to make a home for the child, Moncil was committed to the Lynchburg Division of Social Services by the Lynchburg Juvenile and Domestic Relations Court on 6/21/74. Because Miss Harris continued to be unable to make a home for Moncil, the agency obtained the right to place Moncil for adoption in January, 1977. Miss Harris did not attend the hearing.
2. Rayneil Harris, D.O.B. 2/20/75. Rayneil has never been in the custody of this department although she has been in protective custody. She was removed under an emergency removal order on 10/6/77 but returned home to the mother by the court a week later. When Miss Harris was arrested, Rayneil was placed by the mother with relatives. She currently is in the custody of Miss Harris' boy friends' mother.
3. Eli Woodson Harris, subject of this hearing, was hospitalized on 1/17/77 for pneumonia. An additional diagnosis of failure to thrive was made because of extremely poor weight gain between birth and hospitalization. He gained weight well in the hospital on regular feedings and he was discharged to a Lynchburg Division of Social Services foster home. He was committed to the Lynchburg Division of Social Services on 2/7/77. He remained in foster care until 4/1/77 when he was returned home on a trial basis. After receipt and substantiation of two protective service complaints in September and October 1977, Eli was returned to foster care on 10/6/77 and has remained there to the present.

4. Gwendolyn Darshella Harris, subject of this hearing was picked up on emergency removal order on 10/7/77. There was a history of medical neglect for Gwen who was a premature infant. Doctor's recommendation on discharge from the hospital after her birth, was for medical follow-up. This had not been done by the mother. On 10/31/77 temporary custody of Gwen was awarded to the Lynchburg Division of Social Services.

III. AGENCY RECORD OF SERVICES TO THE NATURAL MOTHER AND FATHER:

Loren Harris was in foster care with this department from 4/2/71 to 6/13/74. She gave birth to her first child, Moncil on 2/14/73 and on 2/26/74, Moncil was placed in foster care. Moncil never returned home. Miss Harris had intense social services from this department from 9/74-8/75 by her social worker, Mrs. Martin, who had approximately 5 cases in all and was therefore able to spend quite a lot of time with her. In 1974, the Lynchburg Division of Social Services assisted Miss Harris with job training through the Virginia Employment Commission and job placement at the Lynchburg Nursing Home, securing baby supplies and clothes, a bassinet, washing machine, fuel, housing improvement, household goods and rent. Also involved in offering assistance were Voc. Rehab, Kum-Bay-Yah, Holy Cross and the Salvation Army. Although financial assistance, tangible goods and services were made available to Miss Harris, little progress was noted.

On 2/20/75, Miss Harris gave birth to her second child, Rayneil, Mrs. McDaniel, social worker at the Lynchburg Division of Social Services, continued to work with Miss Harris from 1975-1977. Housing and money management continued to be a problem.

On June 28, 1976, the Lynchburg Division of Social Services petitioned the court for permanent custody of Moncil. The case was continued for the agency to work with Miss Harris to correct the home situation. After six months the worker reported to the court that Miss Harris had not been cooperative and the court terminated parental rights in January, 1977.

During this time, Miss Harris gave birth to her third child, Eli, born 9/76. At 4 months of age, he was diagnosed as a failure to thrive infant. He entered foster care in 2/77 and although he gained weight and grew while in the hospital and in foster care, Miss Harris never accepted the diagnosis of failure to thrive.

Eli was returned home in April, 1977 under supervision, and in July, 1977, Miss Harris gave birth to her fourth child, Gwen. The agency continued to offer services to the home.

Two substantiated protective service complaints were received in September and

October, 1977. Upon investigation it was found that Gwen had not had medical services since birth, the house had brokenout windows, inadequate heat and no hot water. On October 6, 1977, all three children--Rayneil, Eli, and Gwen were removed from the home and placed in foster care. Rayneil was returned home by the court because her situation was felt to be less critical, but Eli and Gwen have remained in care since that time.

Social work services were given to the mother after the removal of the children. Miss Mehaffey, social worker, attempted to arrange visitation on a regular basis. There were numerous problems with either Miss Harris not showing up for the visit or Miss Mehaffey having to secure food and fuel for Miss Harris so the children could visit.

On May 17, 1977 Miss Harris was found guilty of Welfare fraud for having received \$1547.00 in ADC monies for which she was not eligible.

In August 1978 Miss Harris was arrested and charged with assault on a police officer, resisting arrest, hendering a police officer, curse and abuse and malicious wounding. She was convicted of these charges and sentenced to five years. She is still in Goochland.

In the period of time in which Mrs. Martin was Miss Harris' social worker, problems were noted in regard to Mr. Eli Woodson. Miss Harris reported having been beaten by Mr. Woodson on two separate occasions. It was also reported to the agency by Miss Harris that Mr. Woodson had taken her ADC monies.

It was found in the October 1977 protective service investigation that Miss Harris' only source of income was her ADC check of \$158.00. Mr. Woodson had acknowledged paternity of Eli and Gwen and had stated that he would contribute to their support. On October 1977 Miss Harris reported that Mr. Woodson did not contribute to the support of the children nor did he assist in the day to day care of the children.

On October 1, 1978 Mr. Woodson was sent to jail. He was released April 26, 1979.

Mr. Woodson has been out of jail since April 26, 1979. He has been working at Holiday Inn South for the past seven months. Mr. Woodson did not contact this agency regarding the children until after being contacted by the Lynchburg Division of Social Services on February 5, 1980 about the hearing to free the children for adoption.

IV. FAILURE TO ALLEVIATE THE CIRCUMSTANCES WHICH LED TO THE PLACEMENT OF THE CHILD:

1. Eli's first foster care plan was filed with the court on June 29, 1978 and approved on September 11, 1978. The goal in the plan was return home with expected date of May 1979. Service objective expected of the parent were: Maintenance of sound housing, provision of adequate heat and utilities, demonstration of satisfactory nutritional standards in the home and financial stability by May 1979. In August 1978, Miss Harris was incarcerated.
2. Gwen's first foster care plan was filed with the court on January 10, 1978 and was approved by the court on the date. Agency plan was for Gwen to remain in foster

care until return home could be achieved. Eight months after the plan was approved, Miss Harris was incarcerated.

On February 14, 1979, Gwen's second plan was filed with the court and approved on June 21, 1979. The second plan spoke to the possibility of permanent separation.

Gwen and Eli came into care in October 1977. This agency attempted to offer services to the mother so that the children could be returned. Ten months after the children entered care Miss Harris was incarcerated and is still there, serving a five year sentence. Her date of release is not known.

SUMMARY:

Many factors have been taken into consideration in reaching the decision that adoptive placement would best meet the needs of the children. These factors are:

1. That both children have spent the last two years four months continuously in foster care.
2. That Miss Harris' ability to resume parenting in a reasonable period of time has not been achieved.
3. That the father has failed, without good cause, to communicate on a continuing or planned basis with either child or pay support for a period in excess of 12 months.

RECOMMENDATION:

The Lynchburg Division of Social Services therefore recommends that Gwen and Eli Harris be permanently separated from both parents, that all residual parental rights be terminated and that the Lynchburg Division of Social Services be given permission to place these children for adoption.

Respectfully submitted,

Chuck McNeil

Mary C. J. McNeil, ASW
Senior Social Worker

Waldemar B. Kinzie

Mrs. Waldemar B. Kinzie, RSW
Chief Social Work Supervisor
DEPARTMENT OF HUMAN SERVICES
DIVISION OF SOCIAL SERVICES

/lbd

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG

SEP 23 1980

COMMONWEALTH OF VIRGINIA

IN RE: Eli Woodson Harris

*
*
*
*
*
*

COMMITMENT FOR ADOPTION

This day came the Lynchburg Division of Social Services, by Counsel, which has petitioned the Court for the permanent separation of Eli Woodson Harris from his parents and placement of said child with the Lynchburg Division of Social Services for the purpose of adoption,

And it appearing to the Court as follows:

That the name of said child is Eli Woodson Harris and that he was born on September 5, 1976;

That the mother of said child is Lorene Patrice Harris;

That the father of said child is Eli Woodson;

That the said mother, Lorene Patrice Harris, J. Barrett Jones, Attorney for the said Lorene Patrice Harris, Eli Woodson, Curtis M. Coward, Attorney for the said Eli Woodson, and John J. O'Keefe, Jr., guardian ad litem for the said Eli Woodson Harris, are present in Court;

That Lorene Patrice Harris and Eli Woodson have, within the meaning of Sec. 16.1-283, Code of Virginia (1950), as amended, without good cause, been unwilling or unable within a reasonable period to remedy substantially the conditions which led to Eli Woodson Harris's foster care placement, notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to such end; and

That it is in the best interests of Eli Woodson Harris that the residual parental rights of Lorene Patrice Harris and Eli Woodson in and to said child be terminated;

UPON CONSIDERATION WHEREOF, the Court, having heard the evidence upon said petition and being of the opinion that the said Eli Woodson Harris comes within the jurisdiction of the law as embraced with Title 16.1, Chapter 11, of the Code of Virginia (1950), as amended; and being of the further opinion that it is in the best interests of all parties that said child be separated permanently from his natural parents, the said Lorene Patrice Harris and Eli Woodson, and that all residual parental rights of both the said mother and the said father be terminated, it is so ORDERED: and the Lynchburg Division of Social Services shall be free to place said child for adoption and consent thereto and to make such permanent plans for said child as may otherwise be within the scope of their authority.

The Courth doth further ORDER that John J. O'Keeffe, Jr., who was appointed by this Court to act as Guardian Ad Litem for Eli Woodson Harris, be paid the sum of \$100.00 for his fee for acting as Guardian Ad Litem.

And nothing further remaining to be done, this matter is ORDERED stricken from the docket.

Enter:

Judge

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG
SEP 23 1980

COMMONWEALTH OF VIRGINIA *
IN RE: Gwendolyn Darshella Harris * * COMMITMENT FOR ADOPTION
*

This day came the Lynchburg Division of Social Services, by Counsel, which has petitioned the Court for the permanent separation of Gwendolyn Darshella Harris from her parents and placement of said child with the Lynchburg Division of Social Services for the purpose of adoption;

And it appearing to the Court as follows:

That the name of said child is Gwendolyn Darshella Harris and that she was born on July 24, 1977;

That the mother of said child is Lorene Patrice Harris;

That the father of said child is Eli Woodson;

That the said mother, Lorene Patrice Harris, J. Barrett Jones, Attorney for the said Lorene Patrice Harris, Eli Woodson, Curtis M. Coward, Attorney for the said Eli Woodson, and John J. O'Keefe, Jr., guardian ad litem for the said Gwendolyn Darshella Harris, are present in Court;

That Lorene Patrice Harris and Eli Woodson have, within the meaning of Section 16.1-283, Code of Virginia (1950), as amended, without good cause, been unwilling or unable within a reasonable period to remedy substantially the conditions which led to Gwendolyn Darshella Harris's foster care placement, notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to such end; and

That it is in the best interests of Gwendolyn Darshella Harris that the residual parental rights of Lorene Patrice Harris and Eli Woodson in and to said child be terminated;

UPON CONSIDERATION WHEREOF, the Court, having heard the evidence upon said petition and being of the opinion that the said Gwendolyn Darshella Harris comes within the jurisdiction of the law as embraced with Title 16.1, Chapter 11, of the Code of Virginia (1950), as amended; and being of the further opinion that it is in the best interests of all parties that said child be separated permanently from her natural parents, the said Lorene Patrice Harris and Eli Woodson, and that all residual parental rights of both the said mother and the said father be terminated, it is so ORDERED; and the Lynchburg Division of Social Services shall be free to place said child for adoption and consent thereto and to make such permanent plans for said child as may otherwise be within the scope of their authority.

The Court doth further ORDER that John J. O'Keeffe, Jr., who was appointed by this Court to act as Guardian Ad Litem for Gwendolyn Darshella Harris, be paid the sum of \$100.00 for his fee for acting as Guardian Ad Litem.

And nothing further remaining to be done, this matter is ORDERED stricken from the docket.

Enter:

Judge

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG

IN RE: ELI WOODSON HARRIS and
GWENDOLYN D. HARRIS

*
*

STIPULATED
WRITTEN STATEMENT

Come now the parties herein, pursuant to Rule 5:9 of the Rules of the Supreme Court of Virginia, and present the following as a Stipulated Written Statement:

1. Eli Woodson Harris was born on September 5, 1976, to Lorene Harris ("Harris") and Eli Woodson ("Woodson"), who were unmarried minors at the time of birth. Harris had herself been in foster care under the Lynchburg Division of Social Services ("Division") from 1971 until 1974. Prior to the date of birth of Eli Woodson Harris, Harris had given birth to two other children. Woodson was unemployed.

2. During the period of time immediately following the birth of Eli Woodson Harris, the Division made several contacts with Harris. There were random observations of Woodson in the home by agents of the Division, and Woodson acknowledged paternity of Eli Woodson Harris. The Division made no attempt to provide services to Woodson, and Woodson did not initiate contact with the Division. Woodson was not living in the family home at the time and provided no known support for the child.

3. On January 17, 1977, Eli Woodson Harris was hospitalized for pneumonia and an additional diagnosis of failure to thrive was made because of extremely poor weight gain between birth and hospitalization. The child gained weight well in the hospital on regular feedings and was discharged to a Division foster home. He was committed to the Division on February 7, 1977. He remained in foster care until April 1, 1977, when he was returned home to Harris on a trial basis. After receipt and substantiation of two protective service complaints in September and October of 1977, the said Eli Woodson Harris was returned to foster care on October 6, 1977, in which status he remained through the time of the proceedings herein. During the period in question, Eli Woodson was still not living in the family home, nor providing reliable assistance with respect to the numerous problems the family was experiencing.

4. Gwendolyn Darshella Harris was born on July 24, 1977, to Harris and Woodson, who remained unmarried. Gwendolyn Darshella Harris was removed from the home along with Eli Woodson Harris on October 6, 1977. Also removed was Rayneil Harris, age two and one-half, whose paternity is uncertain, but who Woodson believed to be his child by Harris.

5. It was found in October 1977, during a course of the investigation associated with the commitment to foster care of the three children set out in four (4) hereinabove, that Harris's only source of income was her Aid to Dependent Children check of \$158.00 per month. Woodson was known to the Division as the father and acknowledged paternity of Eli and Gwen, indicating a willingness to contribute to their support. It was determined that during the

course of the investigation of October 1977, that Mr. Woodson did not, in fact, at that time contribute to the support of the children nor did he assist in the day-to-day care of the children. After Eli Woodson Harris and Gwendolyn Darshell Harris were placed in foster care in October 1977, the Division provided assistance to Harris. Visitation was arranged on a regular basis. Ms. Harris was initially sporadic in keeping the visits and on occasion during this period food and fuel had to be obtained prior to visitation in Harris's home. Harris's performance improved, however, and by March had become more reliable with respect to meetings and scheduled visitations. Between March and August of 1978, Ms. Harris visited with the children at the rate of once per month. The Division concentrated upon assisting Harris in providing a stable home for the children, consistent with minimum physical standards, so that the children could be returned to her. Many services had been provided to Harris in the fall of 1976 and the winter of 1977, including job training, job placement, and referrals and transportation to other community agencies such as the Virginia Department of Vocational Rehabilitation, Kum-Bay-Yah (a local charitable organization assisting needy persons with housing, fuel, etc.), charitable organizations within the Catholic Church, and the Salvation Army. Many of these services were not duplicated at this point in 1978. Most of the food, fuel and housing problems were addressed by both the social worker and Harris (Please see page 2 of February 27, 1980, pre-hearing report). Referrals were made during this time to

ecumenical, charitable organizations, and to the Lynchburg Redevelopment and Housing Authority for rental assistance. Subsequent to March 1978, Harris visited the two children more frequently. From October 1977 until August 1978, Harris was employed in a variety of positions, including jobs as a kitchen helper, in an effort to improve her financial situation.

6. On October 1, 1978, Woodson was committed to jail for a misdemeanor. He was released on April 26, 1979.

7. Harris was arrested and charged with assault on a police officer and resisting arrest in August 1978, and was subsequently convicted and sentenced to a period of five (5) years in the penitentiary. At the time of the hearings herein she was still in incarceration in the State penitentiary system.

8. Subsequent to the removal of the children from the custody of Harris in October 1977, custody of Rayneil Harris was awarded to Woodson's mother by the Lynchburg Juvenile and Domestic Relations Court. She has remained in the custody of Woodson's mother and has prospered therein since that time. Following Woodson's release in April 1979, and prior to the hearings herein in Lynchburg Juvenile and Domestic Relations Court on March 19, 1980, Woodson lived alone. Shortly after March 19, 1980, Woodson moved in to his mother's home with Rayneil and resided there at the time of the hearing in Circuit Court in these proceedings on July 28, 1980. Woodson has supported the said Rayneil Harris consistently by making payments to his mother since the date of his release in April 1979. The child has prospered in the care and custody of Woodson and his mother, with whom she now lives. Woodson has been employed at the Holiday Inn South in Lynchburg without interruption since August 18, 1979.

9. On February 5, 1980, Woodson was contacted by the Division with respect to termination of his parental rights in Eli Woodson Harris and Gwendolyn Darshella Harris. Prior to February 5, 1980, Woodson made no inquiries into the care and well being of Eli Woodson Harris or Gwendolyn Darshella Harris nor requested visitation with either child. Eli Woodson testified that he was not aware that he could seek custody of, or had any rights with respect to, the children prior to this contact on February 5, 1980, as the children had been in foster care for some fifteen (15) months. Woodson did not make any payments for the support of the said Eli Woodson Harris or Gwendolyn Darshella Harris prior to the Juvenile and Domestic Relations Court hearing in March 1980. At the time of that hearing, and all times subsequent thereto, Eli Woodson indicated his interest in gaining custody of the his two minor children and in supporting them. Subsequent to the hearing in March 1980, Woodson made regular support payments during the period prior to the Circuit Court hearing on July 28, 1980, which said payments totaled \$210.00.

10. During the period of Woodson's incarceration, from October 1978, until April 1979, Woodson did not contact nor inquire into the well being of his children, nor make any attempt to contact the Division. The Division believed Woodson was still incarcerated during the period of August 1979 through February 1980, and made no attempt to contact him prior to notice to terminate parental rights on February 5, 1980.

11. From and after February 5, 1980, Eli Woodson made frequent and consistent arrangements to visit with the subject minor children. Eli Woodson Harris and Gwendolyn Darshella Harris. During these visitations he was observed by workers at the Division who reported that the said children did not recognize Woodson as their psychological parent "and continued to view their foster parents as their respective mothers and fathers", but that while these children were initially distant, Woodson's relationship improved steadily during the period. Woodson established savings accounts at a local bank in the joint names of himself and Eli Woodson Harris and Gwendolyn Darshella Harris to which he made regular contributions. He opposed the commitment for adoption entered in the Juvenile and Domestic Relations District Court prior to the appeal to the Circuit Court of the City of Lynchburg, and during the period between the adjudication of the Juvenile and Domestic Relations District Court and the proceedings in the Circuit Court continued to visit the subject minor children and made support payments in their behalf as set out hereinabove.

12. At no time during the period September 5, 1976, through the hearing herein February 5, 1980, did Woodson seek, or any Social Service agent provide counseling or assistance to the

13. During the period of her incarceration, beginning in August 1978, and continuing through the period of the hearing herein on July 28, 1980, Harris obtained a General Educational Development Diploma and a Certificate in Secretarial Science. She worked in the prison laundry and as a key punch operator. At the time of the Circuit Court hearing, Harris' application for parole

was scheduled to be considered by the Virginia Parole Board in September 1980, and her parole plan provided for her to live in Lynchburg.

14. While incarcerated, Harris corresponded frequently with the social workers assigned to her children. The purpose of her correspondence was to ask about the children's well being and to send them messages on holidays and their birthdays. She repeatedly requested that the children be brought to visit with her. She was visited by the children in August 1979, and three times between March and July 1980. She planned to seek to re-establish normal parental relations with the children upon her release.

15. Upon the conclusion of testimony and argument in these proceedings on July 28, 1980, the Circuit Court for the City of Lynchburg ordered that the residual parental rights of Eli Woodson and Lorene Harris in the subject children be extinguished.

ENTER:

Judge
Date: _____

ASSIGNMENT OF ERRORS

(1) The action of the Court in terminating the parental rights of Eli Woodson in the subject children absent any evidence with respect to efforts of the Division or any other appropriate agency to provide remedial assistance to him in his capacity as father.

(2) The action of the Court in failing to make a finding of unfitness as a parent with respect to the appellant Woodson.

ASSIGNMENTS OF ERROR

(1) The action of the Court in overruling appellant Harris' demurrer.

(2) The action of the Court in terminating appellant Harris' residual parental rights without a finding that she was an unfit mother. (Orders of September 23, 1980.)

(3) The action of the Court in terminating appellant Harris' residual parental rights without clear and convincing evidence that (a) she had been unwilling or unable within a reasonable period to remedy substantially the conditions which led to the children's foster care placements, notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to such end, and (b) such unwillingness or inability so to remedy the said conditions was without good cause.

(4) The action of the Court in terminating appellant Harris' residual parental rights when it was error to terminate appellant Woodson's parental rights.