

FILED
December 4, 2006
released at 10:00 a.m.
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Maynard, Justice, dissenting:

This Court continues to decide cases that are devastating to West Virginia families. This is one such case. This decision is simply anti-family. Specifically, the majority has undermined the authority of every parent in West Virginia by permitting minor children to file domestic violence petitions on their own behalf.

Not only does this decision allow minors to file domestic violence petitions against their parents, it permits non-family members - actually strangers - to gain control and custody of children. Just look what happened here. The child who filed the domestic violence petition against his mother has ended up in the custody of an officious intermeddler with whom he has no family relationship. He is a man who lives in another state and who apparently entered this child's life around the time of his father's death and pursued a "mentor" relationship with him, whatever that is. Although the child's mother strongly felt that this relationship was inappropriate, her hands were tied as result of the protective order entered upon the filing of the domestic violence petition. Here is how outrageous this case is: while the protective order was in place, the mother was not permitted to have any contact with her own child or object to his placement with a single man living alone. In fact, when

she had her husband and family members try to contact this man to check on the welfare of her child, the court found her in contempt.

The record shows that the family court placed the child in this man's custody without conducting any independent inquiry into his fitness or ability to provide a suitable home for a teenage boy. Now, this man, whose motives I personally find to be suspect, has unsupervised custody of this child and has him off in another state. In light of the facts of this case alone, I am astounded and troubled by the majority's decision.

The West Virginia Legislature long ago recognized that abuse and neglect by custodial parents represents a serious danger to many children in West Virginia. In order to address this problem, the Legislature enacted a series of statutes designed to protect the interests of all parties involved yet ensure that children will be removed from the custody of abusive or neglectful parents. In particular, W.Va. Code § 49-6-1 (2005) provides that the West Virginia Department of Health and Human Resources may file a petition seeking custody of any child who is believed to be abused or neglected. Further, the law provides that both the child and the parents will be provided with counsel and afforded an adequate opportunity to be heard. If there is a question regarding the fitness of any potential custodian, Child Protective Services can conduct a home study and provide the court with expert advice regarding the suitability of the proposed placement. Moreover, the important relationship between a child and his or her parents can be preserved whenever possible

through the use of improvement periods and supervised visitation. Of course, this process recognizes that “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).

The majority’s decision in this case circumvents this entire body of law by allowing minors to remove themselves from the custody of their parents through a domestic violence petition. Essentially, the majority opinion allows a fourteen-year-old boy who becomes angry at his mother for not buying him a video game or a sixteen-year-old girl whose dad will not let her see her boyfriend to effectively have their parents’ rights terminated by filing a domestic violence petition claiming that their parents are abusing them. While I certainly believe that minors should be protected from abusive parents, I cannot agree to the wholesale rejection of the procedural framework enacted by the Legislature to address this very problem. The potential for misuse of W.Va. Code § 48-27-305 by rebellious teenagers is obvious. Because the majority’s decision turns the parent-child relationship on its head and has the potential to destroy many West Virginia families, I respectfully dissent.