

FILED

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RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Starcher, J., concurring:

I write separately to applaud the actions of the family court judge in this case.

While bad facts often make bad law, in this case the family court judge followed the polar star of any child custody case and determined that it was in Z.B.S.’s best interest that Tina B. have custody.

The dissenting opinion of Justice Maynard suggests that because Z.B.S. shares some percentage of genetic material with Paul S., then Paul S. is legally entitled to his care, custody, and any income which might result from Z.B.S.’s lawsuit arising from the death of his mother or his social security benefits. This dissent casts the majority’s decision to support the family court judge as “anti-family.” Nothing could be further from the truth.

A family is a collection of people composed of parents and children.¹ But not all families are composed of parents and children who are related by blood. Many families have stepparents, stepchildren, foster children, adopted children, or are composed of guardians and wards. We would never go so far as to say these latter compilations founded on love are not “families,” and, more importantly, we should never say that mere blood relations should trump a relationship based upon love and trust.

¹Pope Pius XI called family the “first and essential cell of human society.” Ogden Nash, however, defined a family as “a unit composed not only of children, but of men, women, an occasional animal, and the common cold.”

In this case, Tina B. was a “mother” to Z.B.S. Tina B. shared in the decision to bring Z.B.S. into this world, helped plan the birthing of Z.B.S., helped create a nursery in which to care for Z.B.S. upon his arrival, and also “mothered” Z.B.S. from birth until the death of his biological mother, Christina S.

Time and again cases come before courts where an adult has voluntarily taken on the responsibility for raising a child to whom they are not related in any fashion. After a period, the child and adult usually form a parent-child psychological bond. A court cannot and would not allow a stranger to the child to intervene and take that child away from a biological parent who had raised the child, and by the same reasoning, should not allow a stranger to the child – even if genetically related – to take the child away from a psychological parent.

I therefore concur with the majority opinion.