

FILED
July 27, 2009
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Benjamin, Chief Justice, concurring:

I concur completely in the majority *per curiam* opinion of the Court. The circuit court's orders dismissing the abuse and neglect petition were in error and the writ of prohibition was properly granted. Our guiding principle in cases such as this is the health and welfare of the child. These cases deservedly receive the highest priority of the court system's attention – a priority which applies to government in general. *In re Carlita B*, 185 W.Va. 613, 408 S.E.2d 365 (1991).

I write separately to acknowledge the apparent frustration demonstrated by the circuit court – a frustration which resulted not from any neglect on the court's part, but rather due to the failures of the Department of Health and Human Resources (“DHHR”) to comply in a timely manner with its obligations regarding this child. It is a frustration which I fear is too frequently felt by our courts in matters related to DHHR – and it is a frustration which I sense is too often experienced first hand by the dedicated employees and administrators of DHHR who strive on a daily basis to meet DHHR's legal, and humanitarian, mandate to help families and children in West Virginia. Based upon the DHHR cases which have been before this Court in the last several years, I share this frustration. I sense others on this Court, too, share these frustrations.

As candidly admitted by counsel for DHHR in the oral argument of this case, the resources necessary for DHHR to comply fully with its statutory mandate too frequently are lacking. Based upon the evidence before this Court, I conclude that DHHR's ability to adequately comply herein with its legal obligation was caused not by any desire of a DHHR employee or administrator to do so, nor by the best efforts of DHHR employees and administrators, but rather by the continuing lack of requisite resources which DHHR receives to meet its mission. There is only so much that dedicated DHHR personnel can accomplish without adequate resources. I am deeply troubled and concerned about this continuing resource problem – a problem which I sense may be worsening and may be becoming systemic. This underlying resource problem perhaps deserves the Court's fuller attention.