

# **Workman, C.J., Concurring Opinion, Case No.23997 In the Matter of: Taylor B.**

No. 23997 - In the Matter of Taylor B.

Workman, Chief Justice, concurring:

The opinion of the majority is well-written and absolutely correct on the law. I find the result sufficiently troubling, however, that I feel compelled to write separately. What the opinion does not reflect is that these parents were almost encouraged by the policy of the circuit court in this abuse and neglect case not to acknowledge responsibility for the abuse that occurred to Taylor. The lower court in its final order made this finding:

This Court would come to the legal conclusion that there is no clear and convincing evidence to support the facts that these parents, or either of them, in the face of knowledge of this abuse, took no action or did not identify the perpetrator of this abuse, or are knowingly hiding the identity of the abuser, or are otherwise actually aiding and protecting the abusing parent. The clearer and more convincing evidence adduced at the hearing is the knowledge that both the parents, with knowledge that one of them took certain actions which precipitated the mental and physical condition of the child, have now been educated as to what caused the damage.

Although the court's obvious mistake of clear law in this regard does not exonerate the parents of responsibility for their failure to acknowledge, it

appears to have led at least the mother down a primrose path that will now result in the loss of parental rights to this child. What is also disturbing is that Taylor has now been in the almost constant custody of these parents for all of his three and one-half years. As we have said previously, such sudden alterations can be so traumatic that they may create an adverse impact for the duration of that child's life. As we said in syllabus point three of James M. V. Maynard, 185 W. Va. 648, 408 S.E.2d 400 (1991):

It is a traumatic experience for children to undergo sudden and dramatic changes in their permanent custodians. Lower courts in cases such as these should provide, whenever possible, for a gradual transition period, especially where young children are involved. Further, such gradual transition periods should be developed in a manner intended to foster the emotional adjustment of the children to this change and to maintain as much stability as possible in their lives.

At the most recent West Virginia State Judicial Conference, Dr. Rosalind Folman, a research assistant at the University of Michigan who holds a Ph.D. in Developmental Child Psychology and Social Work, identified this problem in her remarks to the judges of this state. She urged that judges overseeing children's cases attempt to avoid at all costs the sudden, traumatic removal of children from their familiar settings.

Thus, in the event that no suitable relative is found for the permanent placement of Taylor, then at least there should be a gradual transition of this little boy to his permanent adoptive home. He should not be unceremoniously routed out of the only home he has ever known, and he should not be placed in a temporary foster home pending the location of an adoptive home. He should be moved directly, but very gradually, to what will become his permanent adoptive home. If the Department or the guardian ad litem feel that the child is in imminent danger in the home of his biological parents, then the home of the maternal grandmother who has been very involved in his life, or some other relative who Taylor already knows and loves, should be chosen to care for him during the gradual transition.

Lastly, the circuit court in developing the post-termination visitation plan should bear in mind the necessity of minimizing the pain and trauma this little boy will endure in making this major transition in his life. Contact with the parents should be maximized, even if in a supervised setting, so as to facilitate that goal. I urge these principles be followed not for the protection of the parents' rights, but for the protection of Taylor's rights not to have further trauma visited upon his life.