

Starcher, J., Dissenting Opinion, Case No.23997 In the Matter of Taylor B.

No. 23997 - In the Matter of Taylor B.

Starcher, Justice, dissenting:

I am concerned that the majority opinion has, in effect, applied a bright-line rule: unless a parent who abuses their child admits to the abuse, and unless the other parent accuses the "abuser parent" of abuse, neither parent will ever be the child's parent again.

I understand the reasoning behind this sort of rule, but because it seemingly admits to no exceptions, I think that it may run contrary to the principle of assuring that the best interests of the child are held paramount.

Probably a large percentage of parents who commit abuse to a child will never admit to the abuse -- because it is a crime for which they can be imprisoned, and/or because the admission is psychologically so difficult. The same reasoning holds true for making accusations of abuse against one's fellow parent.

But it seems to me to be unreasonable to assume that parents who can't or won't "fess up" or make an accusation regarding abuse can't *ever* become and behave as acceptable parents. Nothing in our statutes says that this is a judgment that the Legislature has made, and I don't think this is an accepted principle of social science. So how can we make this the premise of such a harsh rule, a rule that certainly will have the effect of tearing some children away from basically loving and caring parents, and placing these children into the highly problematic worlds of foster care and adoption?

In the instant case, there was a remarkable uniformity of opinion in the testimony that the mother in this case is a good, hard-working and caring parent. The evidence also showed that the father -- although he very likely seriously abused the child once or twice by a fit of shaking -- was otherwise a

loving, decent parent who was improving and trying to do better. Moreover, it's been over three years since the shaking injury to this child, and there's been no evidence that everything is not going okay with the child in the mother's care.

I certainly think that there is strong reason for DHHR to pay extremely close attention to this situation. It would make sense to require the father to continue parenting education indefinitely. But I think it is complete overkill to terminate the mother's and the father's parental rights simply because the mother refuses to point an accusing finger to her husband and he will not acknowledge his acts of abuse.

Like the trial judge, I think that the weight of the evidence in this case at this time is that this situation can be salvaged, and the child protected completely - - without using the drastic step of terminating parental rights.

Because I don't think it is wise, necessary or legally required to preclude **all** parents who do not admit or accuse abuse from being parents -- and because I think the trial judge made the right call in this particular case -- I respectfully dissent.