

Starcher, J., dissenting:

FILED

July 24, 2001

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

RELEASED

July 25, 2001

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

I dissent to a decision that wrests a young child, against his will, away from a fit and loving primary caretaker parent -- on the unbelievable grounds that the West Virginia public school system is incapable as a matter of law of providing sufficient remedial schooling for the child's learning disability.

The majority opinion concludes that William can "only reach his full potential" if he is in the custody of the parent -- a Texas resident -- who has enough money to pay for him to reach that "potential." This is the first time that I have heard of a "full potential" rule as the legal test for child custody.

The appellant asserts that the appellee father has never offered a cent to help pay for remedial schooling for his son William in West Virginia. The appellee does not point to any facts to dispute this assertion. I do not understand why the majority ignores this issue.

It is sad that these parents could not resolve their dispute without litigation. But the rule of law is *not* that the parent who has the money to buy the "best care" for a child gets custody -- yet that is the rule that the majority is *de facto* applying.

I strongly disagree with a child custody decision that is premised on the purported inability of our state's school system to provide acceptable schooling for a handicapped child. The solution to that condition, if it exists (I doubt it), is to fix the schooling -- not to ship our children away.

Accordingly, I would reverse the circuit court and remand with directions that custody be

returned to the child's mother; that she be required to arrange for special tutoring; and that the father be required to pay his share of the cost of the tutoring.