

FILED

December 13, 2002

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

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Starcher, Justice, dissenting:

The majority opinion, though well-intentioned, is best regarded as a jurisprudential outlier.¹ As I see it, the majority is motivated (and somewhat blinded, I think) by an entirely understandable zeal to protect the interests of people (such as grandparents and adoptive parents) who may at some point have reason to want to exclude others from asserting some type of alleged “parental rights.”

The majority has unfortunately, in the exercise of this zeal, created precedent for dads to pay off moms with a lump sum, and thereby avoid forever the long-term responsibilities of fatherhood. (Or, less likely, moms paying off dads to avoid long-term maternal responsibilities.)

This sort of “buying your way out of parental obligations” is contrary to every known principle in our family law.

My reaction upon reading the majority opinion is that it overemphasizes the term “parental rights.”

As a parent of three (and grandparent of four), I expect that my piece of

¹In science, an “outlier” is a statistical observation that is not homogeneous in value with others of a sample.

experience is a reasonable piece from which to speak. Speaking personally, then: I have found parenthood to be ninety-nine percent about responsibilities and relationships, and very little about “rights,” as that term is generally understood.

In my view (and I think that the law cited in the dissent by Justice Albright supports this view), nothing that a court can or should do can ever *entirely* sever the parent-child relationship. For example, everyone would agree that a biological parent might be compelled to give a DNA sample to help save their child’s life -- even if the child had been adopted and a court had ratified the termination of child support obligations.

To emphasize parental “rights” as the *quid pro quo* for parental obligations is to unavoidably -- even if not intentionally -- foster the view of children as property, or chattels. As in: I have ownership rights in this property, therefore I have the duty to pay taxes or mow the lawn.

But children are not property.

Moreover, even in the world of property, “rights” and “responsibilities” are hardly an “either-or” situation. For example, if I sell a piece of real estate, I probably have few if any “rights” to ordain thereafter how the property is used. But in many circumstances, I can still be held responsible, if I used the property to create an environmental hazard.

My point is that ordinary parental legal obligations and responsibilities, like financial support -- and ordinary parental authorities or jurisdiction, like deciding where a child goes to school, or selecting a child’s doctor -- are best seen as a continuum or a gestalt.

So seen, a biological parent does not either “have” or “not have” “parental rights.”

It's simply not a black or white, "either-or" type of relationship.

The use in the dissenting opinion by Justice Albright of the more nuanced and inclusive term "relationship" is appropriate. This term facilitates recognition of the multifaceted and diverse legal, cultural, religious, and emotional duties, statuses, obligations, and opportunities that are inherent in the parent-child relationship.

I would hold that the family law judge in the instant case should have the authority to conduct a reasonable inquiry into the economic means of this child's biological parent. If those means would permit him to help pay the child's substantial medical bills, I would allow the court to *consider* requiring such a contribution.²

I am authorized to state that Justice Albright joins in this separate opinion.

²I wonder if the hundreds or thousands of people whom the State Office of Child Support Enforcement is pursuing realize that they could have gotten out of their obligations essentially by signing a form consent to adoption and getting court approval of a lump-sum payoff, as the holding of the majority opinion suggests is proper.