

No. 30494 - State of West Virginia ex rel. K.M., a minor child, by her mother and next friend, Katrina M., et al., individually and as class representatives of similarly situated persons v. West Virginia Department of Health and Human Resources and Paul Nusbaum, Secretary

FILED

January 6, 2003

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

RELEASED

January 8, 2003

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

Starcher, Justice, concurring:

I write separately to make several points.

First, I want to express my appreciation that this Court, consistent with our longstanding jurisprudence, has recognized that the modern State is the ultimate guarantor of a minimal level of subsistence to all of its citizens. (In my opinion, this duty extends to basic medical care, as well as shelter, food, and education.¹)

Far from breaking new ground, this Court is acting in the most conservative fashion, as our decision is grounded in four centuries of Anglo-American statutory, constitutional, and common law, beginning with the English Poor Laws and continuing in our Constitutional Framers' adoption of language explicitly recognizing this duty.

Second, I want to point out that the Court's opinion does not preclude more narrowly drawn claims, even claims possibly seeking limited cash assistance, where other

¹"My concept of human rights has grown to include not only the rights to live in peace, but also to adequate health care, shelter, food, and to economic opportunity. I hope this award reflects a universal acceptance and even embrace of this broad-based concept of human rights." Former President Jimmy Carter, after being chosen for the Nobel Peace Prize.

support systems are simply inadequate to achieve a minimal level of subsistence. For example, although governmentally supported housing programs may be available, it appears from the record that if a person has no cash to pay utilities, the housing support will not be made available. My point is that under the majority opinion, it is precisely the facial existence of a wide array of support systems that have the cumulative effect of preventing utter destitution that precludes the petitioners as a class from prevailing on their claim for an extension of cash benefits.

Third, I want to recognize that all of the litigants and counsel in the instant case, and the special master and his team, did a thorough and professional job, that brings credit to them and to our State of West Virginia. Throughout this difficult litigation, all involved, it seems to me, acted with candor, and tried to keep honest human concerns in the forefront. These qualities showed in their work at every level.

Fourth, I especially appreciate the petitioners, who shared the details of their difficult conditions before a court of law. They showed courage that all of us should respect and admire. I am not happy that we as a Court, primarily because of our limited role in a government of divided responsibilities, cannot afford them greater relief.

Finally, while the jurisprudential step that we take by explicitly acknowledging the State's constitutional duty as a last-resort guarantor of subsistence is a significant and positive one, it must be recognized that our decision is "cold comfort" to an innocent child whose family must scrape and suffer, while other children enjoy privilege and surplus.

Thomas Jefferson is reputed to have once said, regarding human slavery and the

founding of this Nation, “I tremble for my country when I reflect that God is just.”

In rendering a judicial opinion in the instant case, I must of necessity directly acknowledge the terrible injustice of how so many of our children – made in the image of God and part of the human family – are denied a fair chance in life.

When I do so – not as a judge, but as a member of that human family, as an American, and as a West Virginian – I cannot feel proud of our society, for all of our achievements.

I feel ashamed. We must do better.