

FILED

July 14, 2004

released at 3:00 p.m.

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

Starcher, J., dissenting:

The DHHR came before this Court asserting two allegations of error: (1) that the circuit judge denied the DHHR's request for transcripts, and (2) that the DHHR was denied the right to call a law enforcement witness.

As the majority opinion ably demonstrates, both of the DHHR's allegations of error are false.

The majority, "sensing" that the DHHR may have a point – despite their failure to prove any of their alleged errors – has reinstated the abuse and neglect case.

The DHHR would have had the right to file a new petition, if they had evidence showing current abuse and neglect. The DHHR does not have the right to prevail before this Court on the basis of false assertions of trial court error.

Accordingly, I dissent. I am authorized to say that Justice Albright joins in this dissent.