

No. 32847 – State of West Virginia ex rel. The West Virginia Department of Health and Human Resources v. The Honorable Fred Fox, Judge of the Circuit Court of Marion County; and Miranda M. and Charles M.

**FILED**

**December 2, 2005**

released at 10:00 a.m.

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

Maynard, Justice, dissenting:

By upholding the circuit court's decision to return Sean to his father Charles, I fear that this Court has placed Sean in grave danger.

I believe there is clear and convincing evidence that the father's conduct resulted in the death of eight-month-old Dominic. It is significant that Dominic was found to have symptoms consistent with "shaken baby syndrome" when he was taken to the hospital. Qualified doctors from a prominent hospital within our State found that Dominic's injuries were non-accidental. Furthermore, Child Protective Service workers, who are trained in child abuse investigation and detection, concluded that Dominic was the victim of physical abuse, and his father was the most likely suspect.

In addition to the physical evidence of abuse, the father's Alford Plea of guilt to involuntary Manslaughter also indicates that he injured Dominic. I agree with the West Virginia Department of Health and Human Resources that eight-year-old child Sean has no place in a home with a father who pled guilty to involuntary manslaughter in causing the death of his own son. Even though Charles did not technically admit guilt in the plea, the

trial court found that “the record in this case supports the conclusion that there is a significant probability that a jury would convict this defendant of the charge contained in the indictment in this case.” This indicates to me that the evidence is strong enough to convince a jury beyond a reasonable doubt that Charles is responsible for the death of his son. Moreover, it does not seem logical that a loving father would plead guilty and be forever labeled a child killer if he bore no responsibility for Dominic’s death. The burden of the stigma that will now follow Charles for life significantly outweighs the burden of any trial that he would have faced.

Given this compelling evidence, I firmly believe that Sean should never be returned to his father. No child should have to suffer the brutal injuries endured by Dominic. Head trauma of this magnitude caused Dominic more pain than most adults will experience in their lifetime. Then, after an unsuccessful surgery, Dominic died after his life support was removed. In my estimation, returning Sean to his father offers too great a risk that Sean may suffer the same fate as his younger brother. Accordingly, I must dissent to the majority opinion.