

FILED

December 6, 2007

Starcher, J., concurring:

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

I grudgingly concur with the majority's opinion in this case.

The appellant, Brian M. Powell, admitted responsibility for his actions that precipitated this case. He pleaded guilty to domestic battery and served time in jail. He and his family were the subject of abuse and neglect proceedings for nearly twenty months. He submitted to numerous counseling sessions. He was suspended without pay for three months by his employer, the Hardy County Board of Education.

In sum, Mr. Powell has paid a hefty price for his anger. For that reason, I concur with the majority's opinion. But my concurrence comes with reservations.

I am a firm believer that violence is an unacceptable parenting technique. No child should live in fear of physical or emotional injury from a parent. As a society, we expect responsible adults to refrain from violence when dealing with other adults; we should also expect responsible parents to refrain from violence or threats of violence toward their own children. As Mohandas Gandhi once said, "I object to violence because when it appears to do good, the good is only temporary; the evil it does is permanent." Mr. Powell, and other parents just like him, must understand that threatening or battering a child will not be tolerated in a civil society.

I partly believe that the State Superintendent of Schools was justified in pursuing additional penalties against Mr. Powell, because his misconduct toward his son

makes me cringe. There is, in each of our minds, a *suspicion* that Mr. Powell might also have been similarly aggressive or abusive toward students, and had it been proven, such conduct might have warranted additional disciplinary action.

I partly also believe that if Mr. Powell had engaged in a different offense – such as sexual misconduct toward his child – this Court would have gone berserk upon seeing the State Superintendent’s four-year suspension of Mr. Powell’s license. The Court would probably have reversed the State Superintendent, and imposed a *greater* penalty.

But I also believe in the power of contrition. Mr. Powell has admitted his error, he has paid a serious price for his error, and no other misconduct involving students has been raised, let alone proven. On this record, the actions of the State Superintendent appear more like “piling it on,” dishing out penalties that bear little relationship to the offense. Suspending Mr. Powell from teaching for four years, when there was no evidence he was unfit to teach, carried too much a load of unfairness.

I therefore respectfully, but reservedly, concur with the majority’s opinion.