

*No. 11-0110 - T.H. v. D.K. and R.R.*

**FILED**

**June 12, 2012**  
**RORY L. PERRY II, CLERK**  
**SUPREME COURT OF APPEALS**  
**OF WEST VIRGINIA**

Ketchum, C.J., dissenting:

W.Va. Code § 51-2A-14 (b) and (c) [2005] says that a circuit judge “may only consider the record” created in the family court, and may only reverse the family court judge if she was clearly wrong. The circuit judge can’t substitute his own interpretation of the evidence simply because he would have done things differently.

I agree with the family court judge who observed the parties and witnesses during three days of bench trial. The circuit court, and now this Court, is substituting its own interpretation of the record. The mother should have kept primary custody of the minor children. I, therefore, dissent.