

No. 11-0994 - *Jonathan Ray Marcus v. Lori Ann Staubs, as mother and next friend of Jessica Lynn Staubs, and as Administratrix of the Estate of Samantha Dawn Staubs, deceased*

FILED

December 7, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Benjamin, J., concurring:

I write separately raising concern that the majority opinion, which reaches a satisfactory result in remanding this case for further development of the facts, has risen to the level of an advisory opinion. This is apparent from phrases such as “these factual issues notwithstanding, we do find that ample legal authority existed to form a potential basis of liability of petitioner,” and the “proper management of the legal and factual issues presented.” Essentially the majority sets forth, unnecessarily, a course by which the petitioner could be deemed responsible for the wrongful death of Samantha Nichole Dawn Staubs. Prejudging foreseeability and intervening causation is simply not within the proper province of this Court at this point in the proceedings.

We have previously acknowledged that this Court is not constituted for the purpose of issuing advisory opinions.¹ While I agree with the result reached, I believe that the majority opinion goes beyond what is necessary and proper for this Court to do in deciding the issue before us. For this reason, I respectfully concur with the majority opinion.

¹ In *Huston v. Mercedes-Benz USA, LLC*, 227 W. Va. 515, 717 S.E.2d (2011), we discussed the impermissibility of rendering advisory opinions when declining to answer a question certified by the circuit court.