

No. 34599 – In the Matter of B.B., K.B., T.B., P.B., J.B., B.B. and T.F.

**FILED**  
**December 22,**  
**2009**

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

Benjamin, Chief Justice, concurring:

I concur completely in the majority *per curiam* opinion of the Court. The July 3, 2008 Dispositional Hearing Order of the circuit court and the termination of rights and denial of post-dispositional visitation was proper. As I wrote earlier this year in my concurrence to the Court’s decision in *State ex rel. WVDHHR v. Pancake*, 224 W.Va. 680 S.E.2d 54 (2009) (C.J.Benjamin, concurring): “Our guiding principle in cases such as this is the health and welfare of the child. These cases deservedly receive the highest priority of the court system’s attention – a priority which applies to government in general. *In re Carlita B.*, 185 W.Va. 613, 408 S.E.2d 365 (1991).”

I write separately to express my continuing frustration with the failures of the Department of Health and Human Resources (“DHHR”) to comply in a timely manner with its legal mandate to help families and children in West Virginia. My concerns are shared by Justice Workman and, I believe, by others on this Court.<sup>1</sup> The harsh emotional tone adopted

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<sup>1</sup> See, for example, Justice Workman’s concurrence herein. Because I believe that Justice Workman’s concurrence focuses too much on the employees and administrators of DHHR, rather than on more institutionalized systemic problems such as inadequate resources, I choose not to join her separate opinion. From my observation, the employees and administrators of DHHR not only have the desire to serve the families and children of West Virginia, but also do so to the best of their abilities. Theirs is a thankless task which is easy to criticize and which too frequently goes unnoticed and unrecognized for the good actually done. I likewise choose not to join in the raw emotionalism apparent in

by Justice Workman in her concurrence, I believe, richly conveys the general frustration of many with DHHR's inability to meet its legal mandate – an inability which, I believe, will necessarily require this Court to resolve the issue if nothing is done.

In view of the continuing inability of the DHHR to meet its legal mandate to the children and families of West Virginia, I believe that this Court must soon consider the creation of a commission to ensure that all legal mandates are adequately met by the DHHR.

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Justice Workman's concurrence. "[T]he effective judge . . . strives to persuade, and not to pontificate." Hon. Ruth Bader Ginsburg, *Speaking in a Judicial Voice*, 67 N.Y.U. L.Rev. 1185, 1186 (1992). A judge should speak in "a moderate and restrained" voice. *Id.* A separate opinion should never "generate more heat than light." *Id.*, at 1194. While I choose not to join her separate opinion, it is apparent that Justice Workman not only shares my frustrations, but that her patience is close to being exhausted, if it isn't already exhausted.