

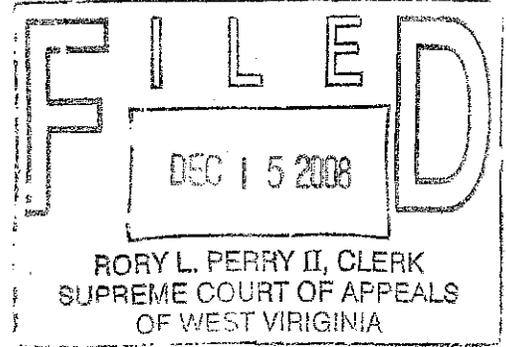
**FILE COPY****Duane C. Rosenlieb, Jr.***Attorney at Law*Post Office Box 913  
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December 15, 2008

DO NOT REMOVE

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Rory Perry

Clerk of the West Virginia Supreme Court of Appeals  
1900 Kanawha Blvd. East, Room E-7  
Charleston, WV 25305-0831**VIA FAX ONLY: (304) 558-3815**Re: In Re K. R.08-JA-14, L. M. 08-  
JA-15, S. M. 08-JA-16 and B. T. 08-JA-17

Dear Mr. Perry:

I am Guardian Ad Litem for the children subject of this matter. I received a telephone call on Wednesday, December 10, 2008 from Lyne Grey of your office advising me I should respond by today to a Petition for Writ of Prohibition filed in this matter against Judge Eagloski.

I appreciate your office faxing a copy of the petition to me, and I received the actual petition with exhibits on Friday, December 12, 2008 via mail. As I told Ms. Grey, I have a felony criminal trial scheduled to take place Tuesday, December 16, 2008 before the Honorable Herman Canady sitting for The Honorable Charles E. King, Jr. in Kanawha County.

Therefore, my analysis of this case is at best shallow, and my advice to the Court is largely based on recollection and a review of my hearing notes.

Having reviewed the petition, I would first note that Mr. Noel M. Olivero, counsel for Freddie E. M. [REDACTED] Jr., one of the respondents in this matter, was not trial counsel and was not present during the litigation of the primary testimony in this abuse and neglect case. Mr. Olivero was not party to the discussions between counsel regarding this case. While he makes arguments about "starvation" of B. T., one of the children in this matter, the simple fact is that another cause was raised for this child's undernourished condition through cross examination by counsel for Respondent, Kerri Thomas. Her counsel, Mr. Herbert Hively, effectively argued and presented testimony that although tests were ordered on the child regarding cardiac and gastric conditions, it was not performed.

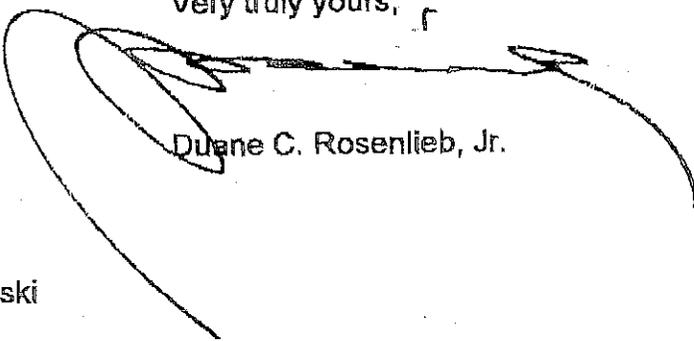
In addition, there was never analysis performed of Ms. Thomas' breast milk to determine whether or not it contained proper nutrient support for the child. It is my understanding that a medical condition was later revealed in the child regarding the function of it's heart, and that that could account for the lack of growth rate and weight gain.

Although the allegations in this case were strong and appeared to be dire (such as is the case when allegations of sexual abuse, sexual assault, or similar "repugnant" allegations are made) there was a substantial lack of convincing testimony to support any type of allegation that the mother actually actively attempted to "starve" her child. The allegations were simply not proven to my satisfaction with the clarity alleged in the abuse neglect and petition nor did they support the allegations asserted in the medical documentation.

No written motion for an improvement period was filed in this case because there was a "stipulated adjudication agreement" entered into by counsel which adjudicated the child neglected, but gave the mother a post adjudicatory period of improvement. Judge Eagloski approved this agreement after some consultation with counsel, and I believe he did not err in this totally discretionary decision.

Although Freddie M. [REDACTED] the father of L. M. and S. M. raises considerable forceful allegations in his petition, it should be noted that he lived in the home and was there two to three days per week while Ms. Thomas worked at Health Plus. In other words, Mr. Meredith makes an allegation that L. M. and S. M. were still in danger of abuse by Ms. Thomas, however, similar conditions alleged to have occurred with the order children that were alleged with the youngest child B. T., were present while Mr. M. [REDACTED] was in the home.

This case contained extensive testimony and voluminous medical records. I apologize that my review of this matter could not have been more in depth and more detailed for the Court, but given such extremely short notice and the fact that I had to prepare for a criminal trial, I hope this in some small measure aids the Court.

Very truly yours, 

Duane C. Rosenlieb, Jr.

DCRJR:blh

cc: Honorable N. Edward Eagloski  
Paige W. Hoffman  
Herbert Hively  
Joseph Reeder  
Stacy Jacques  
Amanda Bre Whipp-Ogle  
Freddie E. M. [REDACTED] Jr.  
Elizabeth Keddedy