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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

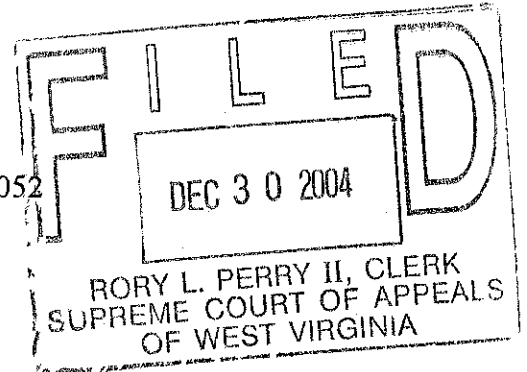
Plaintiff Below, Appellant,

v.

BRANDON B.,

Defendant Below, Appellee.

Docket No.: 32052



**BRIEF OF STATE OF WEST VIRGINIA**

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## **I. STATEMENT OF THE CASE.**

This is a juvenile delinquency case, brought pursuant to the provisions of **W. Va. Code § 49-5-1, et seq.**, where the parties are the State of West Virginia and the juvenile. Adjudication and disposition of this matter were had by agreement of the parties. Neither of the parties appeal from that agreed adjudication or disposition.

Rather, a non-party to this proceeding, the Department of Health and Human Resources (Department) petitioned this Court following disposition under the guise that the juvenile was deprived of a proper disposition. The State of West Virginia joins the juvenile in requesting this Honorable Court to dismiss the Petition for Appeal.

## **II. STATEMENT OF THE FACTS AND PROCEEDING BELOW.**

1. Brandon B., a juvenile then sixteen years of age, was charged by Emergency Petition with the offenses of Domestic Assault, Battery on a Police Officer and Obstruction of a Police Officer and, following hearing, placed in the State's custody at the local juvenile detention center. [Emergency Preliminary Petition, Order: Following Detention Hearing, 2/6/04, R. 1, 5-9; State of West Virginia v. Brandon B., Case No.: 04-JD-4.]
2. A formal Petition charging those same offenses was subsequently filed with the Circuit Court. [Petition, 2/13/04, R. 10-13.]
3. Counsel was appointed for the juvenile and a preliminary hearing on the Petition was scheduled for February 24, 2004. [Initial Order, 2/13/04, R. 14.]
4. The juvenile's counsel filed motions for discovery and suppression and demanded a jury trial. [Motion for Discovery. Motion to Suppress, Demand for Jury Trial, 2/18/04, R. 16-23.]
5. Upon appearing before the Circuit Court, the juvenile waived in writing his right to a

preliminary hearing and the matter was scheduled for an adjudicatory hearing on March 19, 2004. [Waiver of Preliminary Hearing, Preliminary Order, 2/24/04, R. 28-30.]

6. At the Adjudicatory Hearing, the juvenile admitted in writing and orally upon the record to the charges of Domestic Assault and Battery on a Police Officer and was accordingly adjudicated delinquent. [Acknowledgment and Admission, Adjudicatory Hearing Order, 3/19/04, R. 36-43; Tr. 3/19/04, 3-9, R. 53.]

7. By agreement of the parties, and with the recommendation of the Court's Juvenile Probation Office, the matter proceeded directly to a Disposition Hearing. Among its findings, the Court found that there are "no equivalent instate facilities available which meet the needs of the juvenile," "placement is in the best interests of the child," and "continuation in the home is contrary to the best interests of the child and reasonable efforts were made to prevent placement of the child," and ordered temporary custody of the juvenile with the Department with placement at the Glen Mills School, Concordville, Pennsylvania. [Dispositional Order-Commitment, 3/19/04, R. 44-46; Tr. 3/19/04, 9-11, R. 53.]

8. It is undisputed that no representative of the Department was present at the Adjudicatory and Disposition hearing, the hearing having been held earlier in the day than initially anticipated.

9. It is undisputed that, since Adjudication and Disposition occurred at the same hearing, no multi-disciplinary team was convened between the two procedures.

10. A local psychological evaluation of the juvenile recommended placement in a facility with "strict behavior guidelines and a strong educational component." [Psychological Evaluation, 4/6/04, R. 47.]

11. Since the juvenile's placement at Glen Mills School on April 12, 2004, a Revised Individual Services Plan with goals and objectives was prepared with the juvenile. The juvenile is reported to have adjusted progressively and positively, demonstrating good academic performance and motivation, social interaction with other members of the student body, good sportsmanship and enthusiastic athletic participation.

12. The record reveals that the juvenile did not physically arrive at the Glen Mills School until April 12, 2004, three weeks after disposition.

13. The record further reveals that, in that three week interval, the Department undertook no effort with the Circuit Court to correct any perceived problem regarding a multi-disciplinary team meeting. The Department took no action, despite the Department's admission that its representatives were aware within an hour of the March 19, 2004, disposition hearing that disposition occurred without a multi-disciplinary team meeting. Instead, the Department waited four (4) months after the entry of the Dispostional Order, and three (3) months after the juvenile began the Glen Mills School, before filing its Petition for Appeal with this Honorable Court in July 2004.

**III. ISSUES PRESENTED.**

**I. WHETHER THE DEPARTMENT OF HEALTH AND HUMAN RESOURCES HAS STANDING TO APPEAL THIS AGREED JUVENILE DISPOSITION ON THE GROUNDS THAT NO MULTI-DISCIPLINARY TEAM MEETING WAS HELD?**

**II. WHETHER THE CIRCUIT COURT PROPERLY ACCEPTED THE AGREED DISPOSITION OF A JUVENILE IN THE STATE'S CUSTODY WITHOUT A PRIOR MULTI-DISCIPLINARY TEAM MEETING CONVENED PURSUANT TO W. VA. CODE § 49-5D-1, ET SEQ.?**

**IV. TABLE OF AUTHORITIES.**

Findley v. State Farm Mut. Auto Ins. Co.,  
213 W. Va. 80, 576 S.E.2d 807, 822 (2003), *cert den.* 123 S.Ct. 2609.....5, 6, 9.

State v. Steven H.,  
— W. Va. —, — S.E.2d — (No.: 31601, decided June 17, 2004).....7, 9.

E.H. v. Matin, 201 W. Va. 463, 498 S.E.2d 35 (1997).....7, 8.

**W. Va. Code § 49-5D-3**.....7.

**W. Va. Code § 49-5D-3(a)(2)**.....8, 9.

## **V. ARGUMENT.**

### **I. THE DEPARTMENT OF HEALTH AND HUMAN RESOURCES DOES NOT HAVE STANDING TO APPEAL THIS AGREED JUVENILE DISPOSITION ON THE GROUNDS THAT NO MULTI-DISCIPLINARY TEAM MEETING WAS HELD.**

#### **A. Standard of Review.**

[W]hen standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue.

Findley v. State Farm Mut. Auto Ins. Co., 213 W. Va. 80, 576 S.E.2d 807, 822 (2003), *cert den.* 123 S.Ct. 2609 (citation omitted).

#### **B. Discussion.**

The State of West Virginia challenges the standing of the Department to bring this appeal. In its request for relief, the Department purports to stand in the shoes of the juvenile and asks this Court to give the juvenile the multi-disciplinary team meeting of which he was allegedly deprived. However, the juvenile did not ask the Department to intercede on his behalf in this case. The juvenile, assisted by competent and experienced counsel, agreed to a proposed disposition with the State of West Virginia. This disposition was reviewed and recommended by the Circuit Court's Probation Office and representatives of the Glen Mill School. Judge Gray Silver III, handling hundreds of juvenile cases a year in the 23<sup>rd</sup> Circuit, approved the agreement.

The juvenile stands by that agreement, as does the State of West Virginia. The juvenile is progressing well at the Glen Mills School. Neither the juvenile nor the State of West Virginia seek to disrupt that progress. While temporary custody of the juvenile is ordered with the Department, the Department does not contend that it is prejudiced by this agreed disposition

independent of the allegations it makes on behalf of the juvenile. Neither the State of West Virginia nor the juvenile seek the reversal of the disposition that placed the juvenile at the Glen Mills School.

A review of nine other juvenile delinquency cases from Berkeley County resulting in a disposition with placement to Glen Mills School since May 2003 reveals a possible motive for the Department filing this appeal. In each of those cases a multi-disciplinary team meeting was held prior to disposition. In each of those nine cases the Department objected to placement at Glenn Mills School. In each of those nine cases, the Circuit Court found placement at the Glenn Mills School to be in the best interests of the child and that no equivalent in-state facility could meet the needs of the child. State v. A. H., Case No.: 03-JD-49; State v. B. M., Case No.: 03-JD-12; State v. K. D., Case No.: 03-JD-44; State v. R. B., Case No.: 03-JD-8; State v. D. J., Case No.: 03-JD-142; State v. Q. J., Case No.: 04-JD-61; State v. C. R., Case No.: 03-JD-45; and State v. D. H., Case No.: 03-JD-69. The Department's true interest in filing this appeal appears to be exploring another avenue for lodging its standing objection to any placement at the Glen Mills School rather than any real concern for the sanctity of the multi-disciplinary team process.

The Department is not a party to this proceeding. The Department does not represent the juvenile. The Department is not prejudiced by the agreed disposition. The State of West Virginia respectfully requests that this Court dismiss the Petition for Appeal since the Department is not a proper party to request adjudication of this issue and, consequently, lacks standing to have brought this appeal. Findley v. State Farm Mut. Auto Ins. Co., *id.*

**II. THE CIRCUIT COURT PROPERLY ACCEPTED THE AGREED DISPOSITION OF THIS JUVENILE IN THE STATE'S CUSTODY WITHOUT A PRIOR MULTI-DISCIPLINARY TEAM MEETING CONVENED PURSUANT TO W. VA. CODE § 49-5D-1, ET SEQ.**

**A. Standard of Review.**

“ In reviewing challenges to the findings and conclusions of the circuit court, we apply a two-prong deferential standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard, and we review the circuit court's underlying factual findings under a clearly erroneous standard. Questions of law are subject to a *de novo* review.” Syl. Pt. 2, *Walker v. West Virginia Ethics Comm'n*, 201 W. Va. 108, 492 S.E.2d 167 (1997).

Syl. Pt. 2, State v. Steven H., — W. Va. —, — S.E.2d — (No.: 31601, decided June 17, 2004.)

**B. Discussion.**

Neither the juvenile nor the State of West Virginia appeal from the agreed disposition that placed the juvenile at the Glen Mills School with successful results to date. The diligent efforts of the Circuit Court's Probation Officer and the juvenile's counsel in working with Glen Mills School brought about this appropriate disposition.

The State well-recognizes the significance of multi-disciplinary meetings in devising suitable service plans for juvenile delinquents, pursuant to **W. Va. Code § 49-5D-3**. The State also recognizes the mandatory nature of multi-disciplinary team meetings, as pronounced by this Court in E.H. v. Matin, 201 W. Va. 463, 498 S.E.2d 35 (1997). The State asserts that the holding of an agreed disposition in this case without a prior multi-disciplinary team meeting poses the rare exception to, rather than the rule of, common practice in this jurisdiction. That exception in this case is authorized by statute.

Contrary to the Department's assertion, the Circuit Court proceeded directly to an agreed

disposition in perfect accord with the multi-disciplinary requirements of **W. Va. Code** § 49-5D-3(a)(2). The juvenile in this case was, at the time of adjudication and disposition, in the State's custody, having been ordered detained at the local juvenile detention center following hearing. The five-day notice provision of **W. Va. Code** § 49-5D-3(a)(2), allowing for a multi-disciplinary team meeting prior to disposition, is inapplicable to juveniles in the State's custody: "Provided, That such notice is not required in cases where the child is already in the state's custody[.]" *Id.* This proviso was added to the statute by amendment in 2003 and was not considered when this Court rendered its holding in E.H. v. Matin, *supra*. Accordingly, the Circuit Court could, and did, appropriately move directly to disposition at the conclusion of the Adjudicatory Hearing on March 19, 2004, without a five day delay.

If the Department truly believed that the Circuit Court ignored mandatory multi-disciplinary team procedures in a manner that impinged on the Department's statutory obligations, the Department had ample opportunity to move the Circuit Court to correct that error in the three weeks that passed before the juvenile was admitted to Glen Mills School on April 12, 2004. The Department chose not to act until filing its appeal to this Court in July 2004.

The juvenile is progressing well at Glen Mills School over the course of the past eight months. The State believes that if this Court were to grant the Department the relief it seeks, and remand this case for a new disposition hearing after a multi-disciplinary team meeting, that the end result will be the same. The Department will object to the placement at Glen Mills and the Circuit Court will find such placement to be in the best interests of the juvenile and that no equivalent in-state facility can meet the needs of the juvenile. The only change will be that the juvenile's progress at Glen Mills School will be disrupted. The State urges this Court to leave the juvenile's

progress uninterrupted by denying the Petition for Appeal.

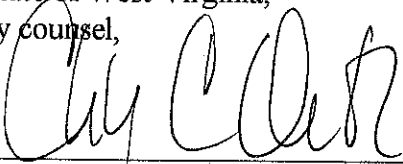
**VI. CONCLUSION.**

The parties do not appeal from the agreed disposition in this juvenile case. The Department does not have standing to bring this appeal. Findley v. State Farm Mut. Auto Ins. Co., supra. This Court is respectfully requested to dismiss the appeal.

Were this Court to find the Department has standing to bring the appeal, this Court is respectfully requested to deny the Petition for Appeal since the Circuit Court appropriately proceeded to disposition without a multi-disciplinary team meeting. The statutory exception of **W. Va. Code § 49-5D-3(a)(2)** allowed the Circuit Court to proceed upon this agreed disposition since the juvenile was in the State's custody at the time. The Circuit court did not err in so proceeding. State v. Steven H., supra.

For the foregoing reasons, this Court is respectfully requested to deny the Petition for Appeal.

Respectfully submitted,  
State of West Virginia,  
by counsel,



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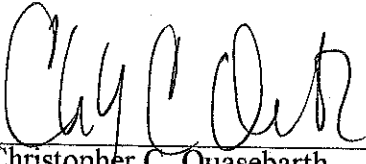
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true copy of the foregoing **BRIEF OF STATE OF WEST VIRGINIA** on this the 29th day of December, 2004, by  hand-delivery,  first-class mail, postage prepaid,  facsimile to:

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