

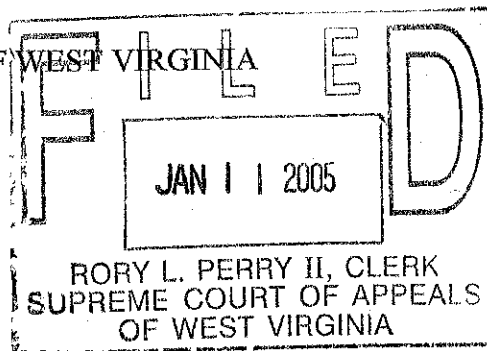
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
IN CHARLESTON

STATE OF WEST VIRGINIA,

Plaintiff Below,

BRANDON B.,

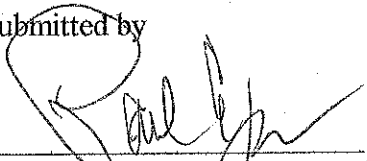
Respondent Below/Appellee



Docket No. 32052

BRIEF OF RESPONDENT JUVENILE, BRANDON B.

Submitted by



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PROCEDURAL BACKGROUND OF THE CASE BELOW

The matter below is a juvenile delinquency case commenced in the circuit court of Berkeley County, West Virginia, Case No. 04-JD-4. The juvenile waived his right to a preliminary hearing and subsequently entered into an agreement with the State of West Virginia whereby he admitted to certain allegations in the juvenile petition and later accepted a disposition whereby he would be placed at the Glen Mills School in Concordville, Pennsylvania. The Dispositional Order was entered on March 19, 2004. It is from this order that the West Virginia Department of Health and Human Resources appeals.

STATEMENT OF THE FACTS OF THE CASE

A juvenile petition was filed against the Appellee, Brandon B., alleging the offenses of Battery on a Police Officer, Domestic Assault, and Obstruction of a Police Officer. Following a detention hearing on February 6, 2004, the juvenile was remanded to the custody of the Berkeley County Juvenile Detention Center to await a preliminary hearing. On February 24, 2004 a preliminary hearing commenced at which time the appellee appeared with the undersigned counsel

and waived his right to such hearing.

On March 19, 2004 the parties again appeared for an adjudication hearing. At that time, the appellee made an admission to the offenses of Domestic Assault and Battery on a Police Officer. The circuit court thereupon adjudged him delinquent and incorrigible. At that hearing, extensive negotiations were held between the juvenile and his counsel, the State of West Virginia and the circuit court's Office of Juvenile Probation. All agreed that it was in the best interests of the juvenile that he be placed at Glen Mills, particularly due to the excellent services provided there and the lack of an equivalent facility in the State of West Virginia. The appellee did not oppose such a disposition and in fact, desired this placement. Once this agreement was reached, the parties agreed to proceed immediately to disposition. The juvenile was advised of his rights by his counsel and wished to proceed with disposition. The appellee does not dispute that no MDT was held or that no DHHR caseworker was present at the hearing.

The agreement was presented to the circuit court which then approved it. (Disposition and Commitment Order, 3/19/04). The appellee was subsequently placed at the Glen Mills School on April 12, 2004.

ARGUMENT

1. THE CIRCUIT COURT DID NOT COMMIT REVERSIBLE ERROR BY FAILING TO CONVENE AN MDT BEFORE PROCEEDING TO AN AGREED DISPOSITION.

POINTS AND AUTHORITIES RELIED UPON

CODES:

West Virginia Code 49-5-1, et-seq.....	4
West Virginia Code 49-5D-3 (a) (2).....	5
West Virginia Code 49-5D-3 (a) (3).....	5

DISCUSSION OF LAW

THE CIRCUIT COURT DID NOT COMMIT REVERSIBLE ERROR BY FAILING TO CONVENE AN MDT BEFORE PROCEEDING TO AN AGREED DISPOSITION..

The State of West Virginia in it's reply brief argues that the DHHR lacks standing to appeal the Disposition and Commitment Order of the circuit court. Your appellee agrees and joins in the State's position. The DHHR did not present any legal authority to indicate that the agency is granted party status to a juvenile proceeding, thereby affording it the right to appeal a court's order. A review of West Virginia Code 49-5-1, et. seq. reveals no provision to make the DHHR a party to these matters. If this Honorable Court were to acknowledge DHHR as a party and grant it the standing to appeal, then it and certainly any other entity would be free to oppose and appeal the rulings of a circuit court. While the DHHR and it's umbrella agencies play an integral role in juvenile proceedings, to the benefit of the juveniles and their families, they are not a party and therefore cannot contest or appeal an adjudication or disposition.

The Appellant cites statutory authority to argue that an MDT must be held in **all cases**, under all circumstances, before a circuit court can proceed to disposition. Appellee respectfully disagrees. The Appellant cites West Virginia Code 49-5D-3(a)(2) yet ignores the exception to the requirement that the DHHR be notified of a hearing: "Provided, That such notice is not required in cases where the child is already in state custody or there exist exigent circumstances which justify taking the child immediately into custody without a judicial proceeding." In the instant case, the Appellee had been in State custody since the entry of the initial order. Therefore, no notice to DHHR was required. The Appellant also cites West Virginia Code 49-5D-3(a)(3) to suggest that an MDT is mandatory in all cases. Yet that section reads ". . . in each case in which a treatment planing team has been convened, the team shall advise the court.....". Clearly, the statute requires that the court be informed as to the types of services that would be available **if** an MDT had already been convened. In this case, the parties negotiated and came to an agreement at the adjudication hearing, thereby obviating the need for an MDT and DHHR participation.

The Appellant presumes to base the motive for its appeal on the benefit to the appellee. "In failing to have notice of the hearing, the Department's ability (and responsibility) to convene an MDT to develop a comprehensive individualized service plan was completely negated. Unfortunately, the ultimate loser in such a thwarted process is the juvenile himself as well as his family whom the Department and the MDT are commissioned to service." Your appellee does not welcome the Appellant's concern as he entered into the agreed upon disposition knowingly and willingly with the State of West Virginia and believes that the resolution of the case is in his best interests.

If it were the juvenile who was appealing the dispositional order, then the Appellant would

have a point as the lack of an MDT would have prejudiced the juvenile's rights to a full and fair review of his case as well as an individualized service plan. But the DHHR is not a party to this action and it was the juvenile's desire to proceed directly to disposition without benefit of an MDT. For all practical purposes, an MDT had been held by virtue of the negotiations held between the parties at the hearing on March 19, 2004. Placement at the Glen Mills School is an option not unknown to the undersigned counsel, the State and the JPO in this case. Because of the lack of a viable alternative in the State of West Virginia, the parties believed that such a placement was the best option for the juvenile. The juvenile's progress at the facility since commitment, confirms the wisdom of the parties' choice.

Your appellee further argues that it would strain already limited judicial resources to require courts to hold MDT's even in cases where an agreement has already been reached as to disposition. There can be no dispute that the juvenile docket in this circuit is quite congested. In many cases, the parties typically negotiate fair resolutions off the record and present them to the courts without the necessity of protracted litigation. To slavishly adhere to a requirement that there be an MDT in all cases prior to disposition would impede a system already moving at a glacial pace. Certainly in the event that adjudication or disposition remains in dispute, an MDT is necessary and in fact, very often facilitates an eventual agreement. But this case proceeded like many others in that the Respondent Juvenile chose early on not to contest the matter and worked with the State to arrive at an appropriate disposition.

The Respondent Juvenile did not and does not object to the lack of a formal MDT prior to adjudication. The Respondent Juvenile does not wish to appeal the dispositional order or modify his current (successful) placement. At the time of the hearing on March 19, 2004, the Respondent Juvenile voluntarily and knowingly entered into an agreement for disposition of his case. The

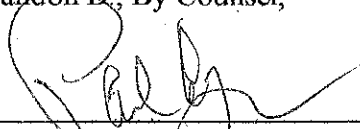
Glen Mills School and the JPO report that he is making substantial progress. The DHHR should not be enabled to disturb this placement merely because a caseworker was not included in the negotiations resulting in this placement.

CONCLUSION

The Berkeley County Circuit Court did not error by proceeding to an agreed-upon disposition of the Appellee's case without convening an MDT. The **parties** to this case came to a practical and acceptable agreement for disposition that was in the best interest of the juvenile.

Your Appellee prays that the Court deny the Appellant's Petition For Appeal.

Respectfully submitted,
Brandon B., By Counsel,



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CERTIFICATE OF SERVICE

I, Paul E. Lane, counsel for the Appellee do hereby certify that I have served a true copy of the attached, *Appellee's Brief*, to counsel as listed below by mailing a true copy to each at their respective addresses by United States first class mail, postage prepaid, this 10th day of January, 2005.



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