



[L.J.B.] had a yeast infection back last year in 2003 and that [a doctor] initially didn't pick it up."). The possibility arises -- and there are no determinations by a fact-finder to discount it -- that at least some of the fixation leading to the unfortunate course of events pertained to the dispute, between Mother and Father, as to whether there were ongoing medical concerns.<sup>1</sup> Additionally, Father and Stepmother testified that they were told, by L.J.B., that she suffered from discomfort and there had been some touching on Mother's part. See N.T. Nov. 24, 2004, at 10-12; N.T., Feb. 10, 2006, at 24-25, 48; N.T., Apr. 30, 2009, at 67. Although there is a finding that there was no sexual misconduct on Mother's part, there is no finding that she did not examine her daughter in light of Father's expression of continuing concerns over the possibility of an infection. Nor is there any determination that some of the controversy, at least, could not have been due to misunderstandings (reasonable or unreasonable) rather than the deeper malice depicted in the majority opinion.

The dissolution of a family is rarely pleasant, and, in light of inherent limitations, it is very difficult for a court of law -- especially an appellate court -- to attain a full appreciation of the dynamics of resultant disputes. In my view, this particular controversy does not require the Court to delve so deeply into facts which have not been concretely addressed by the orphans' court to arrive at the rather straightforward conclusion that the matter is likely moot.

Finally, I have no quarrel with the thinking that it would be beneficial at this stage in this protracted controversy to have L.J.B.'s circumstances evaluated by a "fresh pair of eyes." Opinion Announcing the Judgment of the Court, slip op. at 23. Along the lines

---

<sup>1</sup> The record shows a similar pattern of arguably disproportionate concern on Father's part following an incident in which L.J.B. suffered from head lice. See N.T., Feb. 10, 2006, at 28-30, 34-40, 56, 71-75; N.T., Mar. 2, 2006, at 19-21; N.T., Apr. 30, 2006, at 87-88.

of my thoughts above, however, I see deeper context to some of the examples of impropriety being attributed to the custody judge. While I find it clear that some of the judge's extemporaneous remarks were ill-informed and intemperate, I am not certain they reflect actual bias, albeit I do acknowledge the appearance issue they have created.

Mr. Chief Justice Castille joins this Concurring Opinion.