

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs August 18, 2004 Session

**REBECCA PAIGE MULKEY (HURD) v.
BRADLEY WARREN MULKEY**

**Appeal from the Circuit Court for Hawkins County
No. 7576 Ben K. Wexler, Judge**

No. E2004-00590-COA-R3-CV - FILED OCTOBER 28, 2004

CONCURRING OPINION

The majority Opinion notes that the Trial Court talked to the minor children in camera in the presence of the parties' attorneys, but no court reporter was present, and a record of that proceeding is not before us.

We directed in *Rutherford v. Rutherford*, 971 S.W.2d 955 (Tenn. Ct. App. 1997), p. 956:

The Trial Judge has discretion to interview children apart from the courtroom setting if he considers it is in the best interest of the child. However, if he elects to follow this procedure, he must examine the child "in the presence of attorneys for each side and in the presence of the court reporter." *Newburger v. Newburger*, 10 Tenn. App. 555, 566 (1930), and in order to have a complete record on appeal, a transcript of such evidence must be filed.

This procedure was not followed in this case and the failure to follow this procedure is grounds, standing alone, to vacate and/or reverse the Judgment of the Trial Court, as we noted in *Rutherford*.

HERSCHEL PICKENS FRANKS, P.J.