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January 1999 Term Slip Opinion Summary

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**Slip
Number Case Information and Summary**

1. State of West Virginia ex rel. The State of West Virginia v. Honorable Jeffrey B. Reed, Judge of the Circuit Court of Wood County, and Samuel B. White

No. 25356 Filed: (1/29/99), (Per Curiam).

Granting writ of prohibition to prevent dismissal of criminal action .

2. Central West Virginia Regional Airport Authority, a public agency, and the Kanawha County Commission, a public agency v. The West Virginia Public Port Authority

No. 25628 Filed: (2/5/99), (Per Curiam).

Answering certified question from Kanawha County Circuit Court that the Regional Authority is not an "affected public agency" with statutory authority to concur with site selection for regional airport.

3. State of West Virginia ex rel. ACF Industries, Inc., Wheeling-Pittsburgh Steel Corporation, Elkay Mining Company; and Consolidation Coal Company v. William E. Viewig, Commissioner, Workers' Compensation Division, Bureau of Employment Programs, Danny J. Stover, and Melanie McGhee

No. 25142 Filed: (2/5/99), (Davis, J.)(4-1)(Maynard, J., dissenting).

Denying employers' request for mandamus relief to apply 1995 amendments to PTD claims pending before enactment.

4. **State of West Virginia ex rel. ACF Industries, Inc., Wheeling-Pittsburgh Steel Corporation, Elkay Mining Company, and Consolidation Coal Company v. William E. Viewig, Commisioner, Workers' Compensation Division, Bureau of Employment Programs, Danny J. Stover, and Melanie McGhee**

No. 25142d Filed: (2/5/99), (Maynard, J. dissenting).

Dissenting opinion of Justice Maynard.

5. **In the Matter of: Harry W., 16 years of age**

No. 25349 Filed: (2/22/99), (Per Curiam).

Reversing and remanding a juvenile case for new adjudicatory hearing.

6. **State of West Virginia v. Clyde J. Hedrick, Raymond A. Young, Jr., dba City Bonding Company**

No. 25360 Filed: (2/22/99), (Davis, J.).

Setting forth criteria for decisions involving remission of previously forfeited bail bond.

7. **Patricia G. Anderson v. Dr. Ralph E. Wood and Wood Family Practice, P.D., West Virginia Department of Health and Human Resources**

No. 25362 Filed: (2/22/99), (Davis, J.).

Affirming a circuit court's decision to require DHHR to pay its pro rata share of costs incurred in a civil suit to recover medical expenses.

8. **State of West Virginia v. Tammy R., mother, Mark J., father, and Kia Shante Marie H., infant, Tammy R., Appellant**

No. 25348 Filed: (3/12/99), (Per Curiam).

Affirming the circuit court's decision to place an infant in permanent foster case with her paternal grandmother.

9. City of South Charleston v. The West Virginia Public Service Commission and Green Valley Community Public Service District

No. 25333 Filed: (3/12/99), (Per Curiam).

Affirming a Public Service Commission's final order requiring the city to continue to provide billing, collection and maintenance services for the Green Valley Community Public Service District.

10. William Harmon and Thomas Chiles, Sr. v. Fayette County Board of Education

No. 25323 Filed: (3/12/99), (Starcher, C.J.)(McGraw, J., dissenting).

Affirming the circuit court's decision that an attendance officer and his assistant are not entitled to an annual pay supplement payable to "classroom teachers" who have at least 20 years of teaching experience.

11. Ronald James G. and Linda Elaine G. v. Gilda Gae C., the West Virginia Department of Health and Human Resources

No. 25411 Filed: (3/12/99), (Per Curiam).

Reversing and remanding to the circuit court with directions to ratify a custody agreement.

12. John Casto and Connie Casto, his wife v. Larry Dupuy, individually, and Larry Dupuy, dba Professional Home Inspection and Radon Testing, and Molton, Allen & Williams Mortgage Corp.

No. 25406 Filed: (3/26/99), (Per Curiam).

Reversing the circuit court's decision to grant defendants summary judgment in a tort/contract action and remanding for further proceedings.

13. Cheryl Richardson Devane, personal representative of the Estate of Richard Walter Richardson v. George Kennedy, M.D., and Charles Town General Hospital, Inc., dba Jefferson Memorial Hospital, The West Virginia Insurance Guaranty Association

No. 25206 Filed: (3/26/99), (Davis, J.)(4-1)(Maynard, J., dissenting).

Enforcing a pre-insolvency settlement agreement against the West Virginia Insurance Guaranty Association and setting forth procedures for notice of such claims in the future.

14. State of West Virginia ex rel. John G. Sims, Prosecuting Attorney for Logan County, West Virginia v. Honorable Roger L. Perry, Judge of the Circuit Court of Logan County, and Tommy Dean Hunt

No. 25629 Filed: (3/26/99), (Davis, J.).

Granting a writ of prohibition to prohibit the suppression of incriminating statements, and holding that the Sixth Amendment right to counsel no longer attaches after criminal proceedings are dismissed for lack of evidence.

15. In re: James L.P., a child under the age of eighteen (18) years AND State of West Virginia v. James L.P.

No. 25343 Filed: (4/22/99), (Per Curiam)(Starcher, C.J. and McGraw, J., dissenting).

Affirming the transfer of a juvenile to the criminal jurisdiction of the circuit court, and rejecting the contention that the juvenile's confession must be suppressed as the fruit of an illegal arrest.

16. In re: James L.P., a child under the age of eighteen (18) years AND State of West Virginia v. James L.P.

No. 25343d Filed: (4/22/99), (Starcher, C.J. and McGraw, J., dissenting).

Dissenting opinion of Chief Justice Starcher, joined by Justice McGraw.

17. State of West Virginia ex rel. The State of West Virginia v. Honorable Arthur B. Gutske, Special Judge of the Circuit Court of Wood County, and Mikhail Braverman

No. 25403 Filed: (4/22/99), (Davis, J.).

OPINION WITHDRAWN. MODIFIED OPINION FILED MAY 21, 1999. SEE SLIP # 31.

18. William Joseph Calabrese and Debra Calabrese v. The City of Charleston, a municipal corporation

No. 25430 Filed: (5/13/99), (Starcher, C.J.).

Answering certified questions from the Circuit Court of Kanawha County, the Court addressed several issues related to a political subdivision's immunity from suit for negligent maintenance of its sewer system.

19. **State of West Virginia ex rel. Youth Services Systems, Inc., a West Virginia corporation v. Honorable Ronald E. Wilson, Judge of the Circuit Court of Ohio County and Tract Galloway, individually and as Administratrix of the estate of D'ominique Galloway**

No. 25444 Filed: (5/13/99), (Workman, J.).

Denying a writ of prohibition and holding that a provider of juvenile detention services is not entitled to governmental immunity as a "political subdivision."

20. **John D. Lowe, Jr. and Edward E. Stout, Jr. v. Ralph D. Albertazzie and Carol J. Abertazzie**

No. 25445 Filed: (5/14/99), (Davis, J.).

Answering certified questions from the US District Court for the Northern District of West Virginia and addressing the principle of subsurety and establishment of subsurety by equitable circumstances.

21. **State ex rel. Daniel M., a juvenile, v. The West Virginia Department of Health and Human Resources, and John E. Ohi, Secretary, West Virginia Department of Health and Human Resources**

No. 25796 Filed: (5/14/99), (Maynard, J.).

Granting mandamus relief to require DHHR to pay for juvenile's out-of-state placement and holding that the agency may seek relief from such orders in the future by means of appeal.

22. **Glenell Welch v. John Maxwell Wilson, II**

No. 25211 Filed: (5/17/99), (Per Curiam).

Reversing and remanding with directions to enter an order declaring that appellant had been equitably adopted by the decedent.

23. **Richard Szturm, Individually, on behalf of Huntington Blizzard Hockey v. Huntington Blizzard Hockey Associates Limited Partnership, et al., Robert D. Henry, Appellant**

No. 25196 Filed: (5/17/99), (McGraw, J.).

Addressing a limited partner's priority claims for wages upon dissolution under the Revised Uniform Limited Partnership Act.

24. William "Benji" Becton v. Nicholas Hun, Commissioner, West Virginia Department of Corrections

No. 25364 Filed: (5/18/99), (Workman, J.).

Holding that defense counsel's failure to communicate a plea offer was ineffective assistance and remanding for new sentencing proceeding.

25. State of West Virginia ex rel. Michael Shay Bosley v. Margaret M. Willet, Magistrate for Harrison County, and Edmund J. Matko, Prosecuting Attorney for Harrison County

No. 25476 Filed: (5/19/99), (Per Curiam).

Denying a writ of prohibition intended to prevent the State from proceeding on a DUI prosecution.

26. Lawyer Disciplinary Board v. Thomas W. Kupec

No. 23011 Filed: (5/19/99), (Per Curiam).

Rejecting the HPS recommended sanction (60 day suspension with conditions) and imposing admonishment with conditions.

27. The Daily Gazette Company, Inc., a West Virginia corporation v. The West Virginia Development Office and its Director, Thomas C. Burns

No. 25437 Filed: (5/19/99), (Davis, J.).

Affirming circuit court's decision awarding attorney's fees in FOIA case where attorney succeeded in forcing agency to disclose some, but not all, documents previously withheld.

28. In the Matter of: Danny Binkoski, Magistrate for Hancock County

No. 25042/25176 Filed: (5/19/99), (Per Curiam).

Ordering public censure and costs in judicial disciplinary matter.

29. Charles E. Smith and Annette Smith, his wife v. Sears, Roebuck and Co., a New York corporation doing business in West Virginia; Gregory Bond, as store manager of Sears, Roebuck and Co.; and Gregory Bond, individually

No. 25365 Filed: (5/19/99), (Per Curiam)(Starcher, C.J., and McGraw, J., dissenting).

Affirming circuit court's grant of summary judgment to defendants in age discrimination action.

30. Charles E. Smith and Annette Smith, his wife v. Sears, Roebuck and Co., a New York corporation doing business in West Virginia; Gregory Bond, as store manager of Sears, Roebuck and Co.; and Gregory Bond, individually

No. 25365d Filed: (5/19/99), (Starcher, C.J. and McGraw, J., dissenting).

Dissenting opinion of Chief Justice Starcher, joined by Justice McGraw.

31. State of West Virginia ex rel. The State of West Virginia v. Honorable Arthur B. Gutske, Special Judge of the Circuit Court of Wood County, and Mikhail Braverman

No. 25403 Filed: (5/21/99), (Davis, J.).

Granting writ of prohibition to prohibit enforcement of an order dismissing criminal charges, and holding that an off-duty officer outside of his territorial jurisdiction may nevertheless effect an arrest as a private citizen in certain circumstances.

32. State of West Virginia v. Franklin Junior Kennedy

No. 25367 Filed: (5/25/99), (Workman, J.).

Affirming a first-degree murder conviction.

33. State of West Virginia v. Brenda S. Cook

No. 25408 Filed: (5/26/99), (Davis, J.)(Workman, J., concurring).

Vacating a conviction of second degree murder and remanding for entry of judgment of acquittal and setting forth principles governing the doctrine of defense of another.

34. State of West Virginia ex rel. Dominique Rahman v. Honorable Herman G. Canady, Jr., Judge of the Circuit Court of Kanawha County

No. 25843 Filed: (5/26/99), (Per Curiam).

Issuing writ of mandamus directing lower court to conduct further proceedings pursuant to this Court's previous remand order in a related case.

35. Dave Tucker, Sheriff of Kanawha County, West Virginia, as personal representative of the estate of Reginald T. Seamon, Jr. v. West Virginia Department of Corrections, et al.

No. 25440 Filed: (5/26/99), (Per Curiam)(4-1)(McGraw, J., dissenting).

Affirming the circuit court's entry of summary judgment for defendants in a wrongful death action on the basis that the action was barred by the "public duty doctrine."

36. State of West Virginia v. William H. Burgess

No. 25801 Filed: (5/26/99), (Maynard, J.)(4-1)(McGraw, J., dissenting).

Vacating a conviction for the malicious killing of an animal and remanding for entry of judgment of acquittal.

37. In the Matter of: Dan Tennant, Magistrate for Ohio County

No. 23906 Filed: (5/27/99), (Workman, J.).

Ordering admonishment and payment of costs in judicial disciplinary proceeding related to a magistrate's personal solicitation of campaign contributions.

38. Julia K. McCammon, M.D., FACOG v. Bradley R. Oldaker, Esquire, Frank Venezia, Esquire, E. William Harvit, Esquire, and Sterl Shinaberry, Esquire

No. 25443 Filed: (6/1/99), (Maynard, J.).

Answering certified questions from the Circuit Court of Harrison County regarding application of the statute of limitations to claims of malicious prosecution and the tort of outrage.

39. State of West Virginia v. William H. Burgess

No. 25801d Filed: (6/2/99), (McGraw, J., dissenting).

Dissenting opinion of Justice McGraw.

40. Gary Morgan v. City of Wheeling and The Police Department of the City of Wheeling

No. 25420 Filed: (6/4/99), (Maynard, J.)(Davis, J., disqualified).

Affirming judgment for the City of Wheeling and upholding a city ordinance establishing residency requirements for municipal employees.

41. State of West Virginia v. Brenda S. Cook

No. 25408d Filed: (6/8/99), (Workman, J., concurring).

Concurring opinion of Justice Workman.

42. Kay K. Meadows v. Wal-Mart Stores, Inc.; AND Beverly Judy and Karen Austin, Individually and as Class Representatives v. Sheetz Corporation; AND Christine Remsberg, et al. V. Kmart Corporation; AND Elizabeth Besaw Hutzler and Contessa Besaw Vanorsdale v. Easton Molding Corporation, a West Virginia Corporation; AND H. Vance Stewart v. Waco Equipment Co., dba Waco Scaffolding & Equipment

No. 25325/23526/25327/25328/25329 Filed: (6/9/99), (Maynard, J.)(3-2)(Starcher, C.J. and McGraw, J., dissenting)(Davis, J., concurring).

In four cases, affirming circuit court's decision in Wage Payment Collection Act matter involving payment of unused fringe benefits upon separation from employment. In a fifth case, affirming in part and reversing in part.

43. Sherrill G. Rankin v. Joyce Pullen and Spice Rak Club, Inc. v. Alfred E. Harriston and Double O's Inc.

No. 25809 Filed: (6/10/99), (Per Curiam).

Afirming circuit court's grant of summary judgment to defendant in tort action.

44. State of West Virginia v. Millard Mann

No. 25767 Filed: (6/11/99), (Per Curiam)(Maynard, J., disqualified)(Kaufman, J., sitting by temporary assignment).

Affirming conviction and sentence of defendant convicted of aggravated robbery who received a thirty-year prison sentence.

45. Lisa A. Combs v. John L. Hahn

No. 25824 Filed: (6/11/99), (Davis, J.).

Reversing and remanding for new trial on the issue of damages in personal injury case and addressing trial counsel's right to review jury verdict forms after the verdict is returned.

46. George W. Rhodes, Jr. and Carol D. Rhodes v. Putnam County Sheriff's Department and Jamie Eggleston

No. 25435 Filed: (6/14/99), (Per Curiam)(McGraw, J., dissenting)..

Affirming circuit court's grant of summary judgment in favor of the Putnam County Sheriff's Department based on the public duty doctrine.

47. John G. Bartley and Paul R. Bartley d/b/a Panhandle Athletic Club v. D.L. Morgan, Jr., Inc., and Westfield Insurance Companies

No. 25337 Filed: (6/14/99), (Per Curiam).

Reversing a circuit court's entry of summary judgment for defendants in blasting damage case and remanding for further proceedings.

48. The West Virginia Division of Highways, a corporation v. Jack Butler and the Nicholas County Sheriff/Treasurer

No. 25791 Filed: (6/15/99), (Maynard, J.).

Reversing award for landowner in eminent domain action and remanding for further proceedings.

49. State of West Virginia v. Rebekah Leah Wallace

No. 25826 Filed: (6/15/99), (McGraw, J.).

Reversing a circuit court's decision to dismiss a burglary indictment for failure to allege that the offense was committed "burglariously."

50. One Valley Bank, National Association, As Trustee Under A Certain Trust Agreement With Paul Wright, Grantor v. Mark A Hunt, As Executor of the Last Will and Testament of Paul Wright, Deceased

No. 25428 Filed: (6/15/99), (Per Curiam).

Affirming circuit court's decision to distribute trust property to the beneficiaries named in the general residuary clause of the will.

51 . State of West Virginia v. Tara Williams

No. 25815 Filed: (6/15/99), (Per Curiam)(Starcher, C.J. and McGraw, J., dissenting).

Affirming circuit court's entry of 50-year sentence following voluntary plea to one count of attempted aggravated robbery.

52 . Eric Calvin Cecil and Esther M. Cecil v. D and M Incorporated, a West Virginia corporation; J.H. Fletcher & Co., the successor of D and M Incorporated; and Service Machine Compnay, a West Virginia Corporation, d/b/a/ SMC Electrical Products, Inc.

No. 25330 Filed: (6/15/99), (Per Curiam).

After jury verdict for plaintiffs, affirming in part, reversing in part and remanding mine rail accident matter for further proceedings.

53 . State of West Virginia ex rel. David V. Wright and Christopher David Wright v. Honorable James C. Stucky, Judge of the Circuit Court of Kanawha County, and Marcella Gherke, parent, next friend and legal guardian of George Adam Smoot, a minor

No. 25839 Filed: (6/17/99), (Starcher, C.J.).

Granting writ of prohibition to prohibit enforcement of a circuit court order that prevented petitioners from asserting their constitutional right against self-incrimination in a civil deposition.

54 . State of West Virginia ex rel. Camden-Clark Memorial Hospital, a municipal corporation v. Honorable George W. Hill, Judge of the Circuit Court of Wood County, and William Dempster

No. 25892 Filed: (6/17/99), (Per Curiam)(McGraw, J., dissenting).

Issuing writ of prohibition requiring circuit court not to proceed with a civil action that was not properly perfected by timely service of process.

55 . In the Interest of: Jamie Nicole H. and Thomas Alvin H.

No. 25800 Filed: (6/17/99), (Workman, J.).

Affirming circuit court's decision as to termination of parental rights, but remanding for ruling on post-termination visitation request and submission of permanency plan.

56. Lucille Robertson and Kelly Gleockler v. Opequon Motors, Inc., a West Virginia corporation; and Ellen Parsons, Individually and as President of Defendant Corporation

No. 25331 Filed: (6/17/99), (Per Curiam).

Affirming jury verdict for plaintiffs in WV Wage Payment and Collection Act matter.

57. David E. Sayre v. Jack J. Roop, in his capacity as Executive Director of the West Virginia Regional Jail Authority, and The West Virginia Regional Jail and Correctional Facility Authority

No. 25481 Filed: (6/17/99), (Per Curiam).

Affirming circuit court's decision to grant plaintiff below a new trial after jury verdict for defendants.

58. Kinsey Martin Howell v. Appalachian Energy, Inc., a Pennsylvania Corporation; Westar Energy, Inc. a Texas corporation and Pentex Energy, Inc., a Pennsylvania corporation AND Charles E. Tomes and Julie J. Tomes, his wife v. Doran & Associates, Inc., a Pennsylvania corporation; Westar Energy, Inc. a Texas corporation and Pentex Energy, Inc., a Pennsylvania corporation

No. 25334 Filed: (6/17/99), (Starcher, C.J.).

Affirming circuit court's grant of summary judgment in favor of plaintiff-lessors in oil and gas lease matter.

59. State ex rel. Melvin W. Kahle, Jr., Prosecuting Attorney for Ohio County v. Honorable Fred Risovich, II, Judge of the Circuit Court of Ohio County and Leroy Brown

No. 25889 Filed: (6/18/99), (Per Curiam).

Granting writ of prohibition to prevent enforcement of circuit court order awarding criminal defendant a new trial.

60. Stanley Gene Mitchell v. Anne Marie Mitchell

No. 25421 Filed: (6/18/99), (Per Curiam).

Reversing circuit court's final divorce decree and remanding for further proceedings.

61 . Estate of Janet Leigh Hough, by and through its personal representative, James "Bucky" Lemaster v. The Estate of William Hough, by and through its personal representative, the Berkeley County Sheriff, and John B. Myrick

No. 25145 Filed: (6/18/99), (Per Curiam).

Reversing circuit court's order dismissing plaintiff's wrongful death action and remanding for further proceedings.

62 . Harold Summers, Jr. v. Cathy S. Gatson, Clerk of the Circuit Court of Kanawha County, the Board of Review of the West Virginia Department of Employment Security and The City of Charleston

No. 25793 Filed: (6/18/99), (Per Curiam).

Reversing circuit court's decision and reinstating decision of grievance board granting appellant unemployment compensation benefits.

63 . West Virginia Alcohol Beverage Control Administration and Division of Personnel v. Sherry Hunt Scott

No. 25479 Filed: (6/18/99), (Per Curiam)(Workman, J., dissenting)(Davis, J., disqualified).

Reversing circuit court's decision and remanding with directions to reinstitute a grievance board decision favorable to plaintiff below.

64 . West Virginia Alcohol Beverage Control Administration and Division of Personnel v. Sherry Hunt Scott

No. 25479d Filed: (6/18/99), Dissenting Opinion of Justice Workman..

65 . Harold Frank McBee and Paulberra McBee v. U.S. Silica Compnay

No. 25340 Filed: (6/24/99), (Per Curiam).

Affirming circuit court's grant of summary judgement to defendant employer in employee's suit for work-related injury.

66 . Tina R. Richmond v. James Ellenbogen

No. 25434 Filed: (6/24/99), (Per Curiam)(McGraw, J., disqualified)..

Affirming jury verdict in favor of employee in sexual harassment/constructive discharge case.

67. Richard M. Riffe and Brenda J. Riffe v. Home Finders Associates, Inc., et al.

No. 25178 Filed: (6/25/99), (McGraw, J.).

Determining that a "home warranty contract" offered by defendant was insurance and reversing circuit court's grant of summary judgment to defendant in action for fraud, insurance bad faith and breach of contract.

68. State of West Virginia v. Charles Barry Guthrie

No. 25790 Filed: (6/25/99), (Davis, J.).

Affirming defendant's conviction for sexual assault of his spouse.

69. State of West Virginia v. Mary Beth Davis

No. 25812 Filed: (6/28/99), (Maynard, J.)(Starcher, C.J., concurring).

Affirming appellant's convictions for attempt to injure her infant son by poison and first degree murder of her infant daughter.

70. Julie L. Westfall v. City of Dunbar

No. 25332 Filed: (6/28/99), (Per Curiam).

Reversing circuit court's determination that the City of Dunbar was immune from suit under the Governmental Tort Claims and Insurance Reform Act and remanding for further proceedings.

71. Tanya L. Lacy and Michael Lacy, her husband v. CSX Transportation, Inc. and Richard Brooks v. CSX Transportation, Inc.

No. 25341 Filed: (6/28/99), (McGraw, J.)(Workman, J., and Maynard, J., dissenting).

Reversing judgment in favor of defendants and remanding for further proceedings in personal injury action.

72. State ex rel. Jesse White v. George Trent, Warden of the West Virginia Penitentiary, et al. And State ex rel. Kelly Williams v. Paul Kirby, Warden, Northern Regional Jail and Correctional Facility and State ex rel. Charles Owens v. Nicholas Hun, Commissioner, Division of Corrections, et al.

No. 25823 Filed: (6/28/99), (McGraw, J.).

Answering certified questions from the Circuit Court of Marshall County that inmates seeking relief from the conditions of confinement and related allegations are not entitled to representation by the public defender.

73. State of West Virginia v. Marc Scott

No. 25442 Filed: (7/8/99), (Per Curiam)(Starcher, C.J., dissenting).

Affirming conviction for second degree murder and rejecting defendant's 404(b) argument.

74. State of West Virginia v. Marc Scott

No. 25442d Filed: (7/8/99), (Starcher, C.J., dissenting).

Dissenting opinion of Chief Justice Starcher.

75. Luann E. Klettner and Richard Klettner v. State Farm Mutual Automobile Insurance Company

No. 25436 Filed: (7/8/99), (Workman, J.).

Answering certified question from the US District Court for the Northern District of West Virginia, the Court held that the one year statute of limitations applicable to unfair settlement practices claims under W. Va. Code § 33-11-4(9) does not begin to run until the appeal period has expired on the underlying cause of action upon which the statutory claim is predicated.

76. Elaine M. Runner v. Eric Mark Howell and The State of West Virginia Department of Health & Human Resources, Child Support Enforcement Division

No. 25342 Filed: (7/9/99), (Per Curiam).

Reversing circuit court's order waiving all past child support owed and remanding for further proceedings on termination of parental rights.

77. Marvin T. Bowers, et al. v. Gretchen Wurzburg, The Southland Corporation, et al.

No. 25842 Filed: (7/9/99), (Davis, J.)(Starcher, C.J. and McGraw, J., dissenting).

Affirming, in part, modifying in part, and reversing in part circuit court's decision dismissing certain nonresident defendant corporations for lack of service and setting forth principles regarding service of process upon nonresident defendant international corporations under the Hague Convention.

78. Catherine Reynolds, individually and in her own capacity, and Catherine Reynolds, by and through Roy A. Horning, her power of attorney v. City Hospital, Inc., a West Virginia corporation, and C. Dong Park, M.D.

No. 25831 Filed: (7/9/99), (Per Curiam)(Starcher, C.J., and McGraw, J., dissenting).

Affirming jury verdict for defendants in medical malpractice action.

79. Robert Rollyson v. John David Jordan, Clerk of the Braxton County Commission, Jack L. Sears, Julia Ann Chapman, and Charlotte Jo Sears

No. 25538 Filed: (7/9/99), (Davis, J.).

Affirming in part, reversing in part, and remanding for additional proceedings and clarifying which individuals are entitled to receive a notice to redeem in connection with a purchaser's application for a tax deed.

80. Lawyer Disciplinary Board v. Richard E. Hardison, a member of The West Virginia State Bar

No. 22430 Filed: (7/9/99), (Per Curiam)(Workman, J. and Davis, J., disqualified).

Imposing indefinite suspension with conditions.

81. Beulah B. Wooton, Administratrix of the Estate of Robert O. Wooton v. Darryl J. Roberts and Legacy One, Inc. (fka Associated Cemetary Estates, Inc.)

No. 25834 Filed: (7/9/99), (Per Curiam).

Reversing circuit court's order dismissing plaintiff's claim on limitations grounds and remanding for jury to determine whether plaintiff's claim fell within the "discovery" rule.

82. Hal F. Mekos v. Joe E. Miller

No. 25817 Filed: (7/9/99), (Starcher, C.J.).

Reversing circuit court's decision and reinstating final order of the commissioner of the DMV, and holding that the commissioner may reduce an order of license revocation to the appropriate period of revocation that is in accordance with findings properly made by the commissioner.

83. Philip D. Gallery, Sharon M. Gallery, natural guardians and next friends of Mathew Robert Gallery v. West Virginia Secondary Schools Activities Commission and Warren Charter, Executive Secretary, West Virginia Secondary Schools Activities Commission; and all other members of the West Virginia Secondary Schools Activities Commission

No. 25480 Filed: (7/9/99), (Per Curiam).

Dismissing as moot an appeal involving whether a home-schooled child may participate in interscholastic athletic activities because the child has since enrolled in public school and is therefore eligible for interscholastic athletics.

84. Marlene Wriston v. Raleigh County Emergency Services Authority, a municipal corporation, and Jack D. Bowden, Jr, Individually

No. 25835 Filed: (7/9/99), (Starcher, C.J.).

Reversing circuit court's grant of summary judgment to employer in constructive discharge action where employer demanded that employee reimburse the employer for medical insurance premiums paid while the employee was on unpaid leave for a work-related injury, and after the employee had filed a claim for workers' compensation benefits.

85. Diana Wade, et al. V. K.M. Chengappa, M.D., Donald Blum, M.D., and Wetzel County Hospital Association

No. 24636 Filed: (7/12/99), (Per Curiam)(Starcher, C.J., and McGraw, J., dissenting).

Affirming jury award for plaintiffs in medical malpractice action.

86. Hancock County Board of Education v. Charles Hawken and Wilmon B. Culley, II v. Charles Hawken

No. 25818 Filed: (7/12/99), (Per Curiam)(Starcher, C.J. and McGraw, J., dissenting).

Affirming circuit court's decision in school system employee classification matter.

87 . In Re: Samantha M.

No. 25427 Filed: (7/12/99), (Per Curiam)(Workman, J., concurring in part and dissenting in part).

Reversing circuit court's order awarding custody of father's child to the child's maternal grandparents and remanding for further proceedings.

88 . Kevin S.E., Sr. v. Diana M.E.

No. 26007 Filed: (7/12/99), (Per Curiam)(Starcher, C.J., dissenting)(Workman, J., concurring).

Affirming circuit court's final divorce order that awarded custody of the parties' two children to the father.

89 . Kevin S.E., Sr. v. Diana M.E.

No. 26007c Filed: (7/12/99), (Workman, J., concurring).

Concurring opinion of Justice Workman.

90 . State of West Virginia v. Dewaine C. King

No. 25813 Filed: (7/12/99), (Maynard, J.).

Affirming circuit court's final sentencing order in kidnapping case and setting forth principles governing sentence reduction upon a finding that the victim was "returned or permitted to be returned."

91 . In the matter of George Glen B., Jr.

No. 26202 Filed: (7/12/99), (Workman, J.).

Reversing circuit court's decision returning custody of child to the mother and remanding for further proceedings; setting forth principles for disposition of abuse & neglect petitions based solely upon a previous involuntary termination of parental rights to a sibling.

91 . In the Matter of George Glen B., Jr.

No. 26202 Filed: (7/12/99), (Workman, J.).

Reversing circuit court's determination in abuse & neglect matter, remanding for further proceedings, and setting forth principles governing disposition of abuse & neglect petitions that are based solely upon a previous involuntary termination of parental rights to a sibling.

92. State of West Virginia v. Mathew David S.

No. 25802 Filed: (7/12/99), (Per Curiam).

Affirming conviction for possession of marijuana and holding that the marijuana evidence was admissible as a result of a lawful patdown search.

93. State of West Virginia ex rel. Garden State Newspapers, Inc., doing business as The Charelston Daily Mail v. Honorable Jay M. Hoke, Special Judge of the Circuit Court of Kanawha County, Cathy S. Gatson, Clerk of the Circuit Court of Kanawha County, C.C.F., an infant, William C.F., the Board of Education of the County of Kanawha, and Dr. Ronald Duerring, Superintendent, Kanawha County Schools

No. 26219 Filed: (7/12/99), (Maynard, J.).

Denying writ of prohibition to force circuit court to open proceedings involving juvenile.

94. State of West Virginia v. Eric J. Lightner

No. 25822 Filed: (7/12/99), (Maynard, J.)(Starcher, C.J. and McGraw, J., dissenting).

Affirming convictions for sexual abuse of stepchildren and rejecting defendant's argument that the presence of the alternate juror during deliberations constituted per se reversible error.

95. Tanya L. Lacy and Michael Lacy, her husband v. CSX Transportation, Inc. and Richard Brooks v. CSX Transportation, Inc.

No. 25341d Filed: (7/12/99), (Workman, J., and Maynard, J., dissenting).

Dissenting opinion of Justice Workman, joined by Justice Maynard.

96. Marguerite L. Price v. Robert Lynn Price

No. 25361 Filed: (7/12/99), (Workman, J.).

Reversing circuit court's order regarding child support and holding that work-related child care expenses must be added to the basic child support obligation to determine the total child support obligation, unless the family law master or the court sets forth in writing specific reasons for failing to do so.

97. **William F. Poling and Candace L. Jacques v. Belington bank, Inc., Dorothy F. Poling, V.L. Smithson, A. Houston Booth, Thomas M. Pitsenberger, Dorward L. Matlick, Robert B. Reger, Barbour County Bank, and Other Unknown Persons**

No. 25336 Filed: (7/13/99), (Maynard, J.)(Starcher, C.J. and McGraw, J., dissenting).

Affirming circuit court order dismissing action alleging wrongful transfer of bank stock.

98. **Nancey H. Mayhew v. Robert E. Mayhew**

No. 25214 Filed: (7/14/99), (Davis, J.).

Reversing circuit court order relating to disposition of corporate stock in divorce proceeding and setting forth principles governing active and passive appreciation.

99. **Sharon B.W. v. George B.W.**

No. 25441 Filed: (7/14/99), (Per Curiam).

Affirming in part, reversing in part, and remanding for further proceedings in a divorce action involving alimony and payment of attorney's fees.

100. **Gerald Locke Smith v. Betty M. Rusmisell, Mike Ross, Inc., a West Virginia Corporation, Appellant**

No. 25429 Filed: (7/14/99), (Maynard, J.)(Davis, J., dissenting).

Reversing circuit court's decision to reject a bid for property at a partition sale based upon its conclusion that a \$375,000.00 was "grossly inadequate."

101. **State of West Virginia ex rel. Steven Canterbury, Executive Director of West Virginia Regional Jail and Correctional Facility Authority v. Carl "Worthy" Paul, Magistrate for Ohio County**

No. 25890 Filed: (7/14/99), (Maynard, J.)(Starcher, C.J., concurring, in part, and dissenting, in part).

Granting a moulded writ of prohibition to require a county magistrate to impose certain court costs upon conviction in criminal cases.

102. Lori Toler v. Jody Hager

No. 25477 Filed: (7/14/99), (Maynard, J.).

Reversing and remanding with directions to reinstate original jury verdict in personal injury action.

103. Alvin D. Howell, an individual, d/b/a/ Howell Construction Company v. Hayward Luckey, an individual, d/b/a Luckey Construction

No. 25482 Filed: (7/14/99), (Maynard, J.).

Affirming circuit court's grant of summary judgment to defendant in contribution action who was never joined as a party in the underlying personal injury case.

104. Nathan Peters and Jack Hoffman v. The County Commission of Wood County

No. 25354 Filed: (7/14/99), (Workman, J.).

Reversing circuit court's grant of summary judgment in favor of the county commission and setting forth principles governing whether public bodies subject to the Open Governmental Proceedings Act may utilize executive sessions to consult with attorneys regarding privileged matters.

105. State of West Virginia v. Banner Catlett

No. 25404 Filed: (7/14/99), (Workman, J.)(Starcher, C.J. and McGraw, J., dissenting)(Maynard, J., concurring).

Affirming the circuit court's order releasing defendant from mental institution and sending him to the Department of Corrections, and holding that where a defendant is found not guilty by reason of insanity, and subsequently is found guilty of another criminal charge, the intervening conviction constitutes a judicial determination that the defendant is no longer mentally ill, and no longer a danger to self or others, as those terms are used in West Virginia Code § 27-6A-4 (1999), and the defendant can be sentenced accordingly.

106. State of West Virginia v. Donna Phillips

No. 25811 Filed: (7/14/99), (Workman, J.)(Starcher, C.J., dissenting).

Affirming convictions for disorderly conduct, assault on a police officer, and obstructing a police officer and setting forth principles addressing whether an off-duty police officer remains obligated to preserve the peace and protect the public.

107. State of West Virginia ex rel. Christina Means v. Honorable Charles E. King, Judge of the Circuit Court of Kanawha County, the West Virginia Department of Transportation, Division of Highways, and William Clayton

No. 25891 Filed: (7/14/99), (Workman, J.).

Granting a writ of prohibition, the Court held that an attorney may confer with his or her client witness during a recess or break in a discovery deposition, so long as the attorney did not request a break in the questions or request a conference between question and answer for an improper purpose.

108. In the Matter of: Tracy C. and Ryan B.

No. 25840,25841 Filed: (7/14/99), (Per Curiam).

Reversing circuit court's order in child custody matter and remanding for further proceedings.

109. State of West Virginia ex rel. The Affiliated Construction Trades Foundation, a Division of the West Virginia Building and Construction Trades Council, AFL-CIO, and all those similarly situated v. William F. Vieweg, Commissioner, Bureau of Employment Programs, and Compensation Programs Performance Council

No. 26364 Filed: (7/14/99), (Per Curiam)(Workman, J., Davis, J., and Maynard, J., concurring)(Starcher, C.J. and McGraw, J., dissenting).

Denying writ of prohibition to prevent Commissioner Viewig from dismissing certain coal industry defendants from civil actions seeking recovery of delinquent workers' compensation premiums.

110. State of West Virginia ex rel. The Affiliated Construction Trades Foundation, a Division of the West Virginia Building and Construction Trades Council, AFL-CIO, and all those similarly situated v. William F. Vieweg, Commissioner, Bureau of Employment Programs, and Compensation Programs Performance Council

No. 26364d1 Filed: (7/14/99), (Starcher, C.J., dissenting).

Dissenting opinion of Chief Justice Starcher.

111. **State of West Virginia ex rel. The Affiliated Construction Trades Foundation, a Division of the West Virginia Building and Construction Trades Council, AFL-CIO, and all those similarly situated v. William F. Vieweg, Commissioner, Bureau of Employment Programs, and Compensation Programs Performance Council**

No. 26364d2 Filed: (7/14/99), (McGraw, J., dissenting).

Dissenting opinion of Justice McGraw.

112. **State of West Virginia ex rel. The Affiliated Construction Trades Foundation, a Division of the West Virginia Building and Construction Trades Council, AFL-CIO, and all those similarly situated v. William F. Vieweg, Commissioner, Bureau of Employment Programs, and Compensation Programs Performance Council**

No. 26364c Filed: (7/14/99), (Maynard, J., concurring).

Concurring opinion of Justice Maynard.

113. **State of West Virginia ex rel. The Affiliated Construction Trades Foundation, a Division of the West Virginia Building and Construction Trades Council, AFL-CIO, and all those similarly situated v. William F. Vieweg, Commissioner, Bureau of Employment Programs, and Compensation Programs Performance Council**

No. 26364c2 Filed: (7/14/99), (Davis, J., concurring).

Concurring opinion of Justice Davis.

114. **State of West Virginia ex rel. The Affiliated Construction Trades Foundation, a Division of the West Virginia Building and Construction Trades Council, AFL-CIO, and all those similarly situated v. William F. Vieweg, Commissioner, Bureau of Employment Programs, and Compensation Programs Performance Council**

No. 26364c3 Filed: (7/14/99), (Workman, J., concurring).

Concurring opinion of Justice Workman.

115. State of West Virginia ex rel. Carolyn Shrewsbury and Herndon Processing Company, a West Virginia corporation v. Honorable John S. Hrko, Judge of the Circuit Court of Wyoming County

No. 25806 Filed: (7/14/99), (Per Curiam)(Starcher, C.J., concurring)(McGraw, J., disqualified)(Risovich, J., sitting by special assignment, dissenting).

Granting writ of prohibition to prohibit a party from collaterally challenging in Wyoming County a final order entered by the Circuit Court of Raleigh County affirming petitioner's qualifications to act as administrator of the decedent's estate.

116. Alice R. Patton, et al. V. Cathy S. Gatson, Clerk of the Circuit Court of Kanawha County, The Board of Review of the West Virginia Bureau of Employment Programs, and Sexton Can Company, Inc.

No. 25814 Filed: (7/14/99), (Per Curiam)(Starcher, C.J., dissenting)(Davis, J., concurring)(McGraw, J., dissenting).

Affirming circuit court decision that upheld an administrative determination that claimants failed to show good cause for filing unemployment claims 9 1/2 months after they returned to work.

117. Natalie Haynes v. Rhone-Poulenc, Inc., a foreign corporation

No. 25366 Filed: (7/14/99), (Starcher, C.J.)(Workman, J., dissenting, in part and concurring, in part)(Maynard, J., dissenting)(Davis, J., disqualified)(Risovich, J., sitting by special assignment).

Affirming an award for plaintiff for disability discrimination under the West Virginia Human Rights Act, holding that punitive damages are available in such actions, and setting forth principles governing reasonable accomodation.

118. Lester Kent Finley v. Norfolk and Western Railway Company, a foreign corporation

No. 25816 Filed: (7/15/99), (Per Curiam)(Starcher, C.J., and McGraw, J., dissenting)(Workman, J., and Maynard, J., concurring).

Affirming jury verdict in favor of company in personal injury action under the Federal Employers' Liability Act.

119. Debbie Sipple, as Administratrix of the Estate of Sidney Ward Sipple, deceased, and Debbie Sipple, individually v. David Starr, individually, and DBA Rocket mart, Inc., a West Virginia corporation, and Petroleum Products, Inc., a corporation

No. 25798 Filed: (7/15/99), (McGraw, J.)(Maynard, J., disqualified)(Kaufman, J., sitting by special assignment)(Davis, J., and Kaufman, J., dissenting)..

Reversing a grant of summary judgment for fuel distributing company in wrongful death action arising from incident where decedent was shot while visiting a gas station and convenience store where defendant was supplier.

120. In the Matter of: Helen McCormick, Magistrate for Lincoln County

No. 23971 Filed: (7/15/99), (Per Curiam).

Dismissing, in part, and issuing public reprimand in judicial disciplinary matter.

121. Barbara Walker and Theresa Dell Walker v. Don Meadows, Sheriff of Mercer County, and the Mercer County Commission

No. 25369 Filed: (7/15/99), (Per Curiam).

Answering certified questions from the Circuit Court of Mercer County relative to the application of the special relationship exception to the public duty doctrine.

122. State of West Virginia v. Stephen W. Hatfield

No. 25368 Filed: (7/15/99), (Per Curiam)(Starcher, C.J., and McGraw, J., dissenting)(Maynard, J., disqualified)(Cline, J., sitting by special assignment)..

Affirming circuit court's determination of sentence upon remand.

123. In Re: Billy Joe M. and Jason M.

No. 25888 Filed: (7/15/99), (Workman, J.).

Reversing circuit court decision and remanding for further proceedings regarding post-termination visitation between parent and child.

124. Charles A. Moats, Administrator of the Estate of Joanie Elliott v. Preston County Commission, a political subdivision, and Valley Comprehensive Community Health Center, Inc., a West Virginia corporation

No. 25829/25830 Filed: (7/15/99), (Maynard, J.).

Answering certified questions in a wrongful death action arising out of the Circuit Court of Preston County related to the special relationship exception to the public duty doctrine.

125. In re: Samantha M.

No. 25427c/d Filed: (7/15/99), (Workman, J., concurring, in part and dissenting, in part).

Concurring, in part, and dissenting, in part, opinion of Justice Workman.

126. West Virginia Mandatory Continuing Legal Education Commission v. Mark J. Christman, Milton Cohen, Gregory C. Devereaux, John A. Farmer, Larry L. Harless, Sheila D. Norman, John D. O'Connor, Richard H. Perlman, Kathryn M. Schuppener, Bert M. Whorton, Brentton W. Wolfinbarger and Scott Zegeer, Respondents.

No. 25537 Filed: (7/16/99), (Per Curiam).

Suspending licenses of twelve lawyers for failure to comply with mandatory legal education and reporting requirements.

127. John S. Matz, et al., v. Corna and Company, Inc., and William Meyer

No. 25846 Filed: (7/16/99), (Per Curiam).

Reversing entry of default judgment in favor of defendants below in action alleging breach of fiduciary duty.

128. Hancock County Board of Education v. Charles Hawken and Wilmon B. Culley v. Charles Hawken

No. 25818d Filed: (7/16/99), (McGraw, J., dissenting, joined by Starcher, C.J.).

Dissenting opinion of Justice McGraw, joined by Chief Justice Starcher.

129. Webster County Commission v. Caroline Clayton, Sheriff of Webster County

No. 25625 Filed: (7/16/99), (Davis, J.).

Affirming circuit court's grant of a permanent injunction to prevent county sheriff from hiring an employee in light of the county commission's refusal to consent to such hiring as required by West Virginia Code § 7-7-7.

130. Paul Mitchell, as Executor of the Estate of May S. Mitchell v. Anthony George Broadnax and Naomi S. Mitchell and Geraldine O'Dell v. Anthony Broadnax

No. 25539 Filed: (7/16/99), (Per Curiam)(Starcher, C.J., dissenting)(Davis, J., concurring)(McGraw, J., dissenting).

Affirming circuit court's grant of summary judgment to insurance company, based upon the fact that the plaintiff below could recover only the statutory mandatory minimum amount of uninsured motorists proceeds, in light of the "owned but not insured" exclusion in the policy.

131. Wheeling-Pittsburgh Steel Corporation v. Kyu Chong Rowing and West Virginia Human Rights Commission

No. 25825 Filed: (7/16/99), (McGraw, J.).

Affirming circuit court's decision that upheld an administrative finding of national origin discrimination, and holding that JTPA grievance procedures do not preempt a claim under the WV Human Rights Act.

132. Natalie Haynes v. Rhone Poulenc, Inc.

No. 25366d Filed: (7/16/99), (Maynard, J., dissenting).

Dissenting opinion of Justice Maynard

133. Cindy Dawn Pauley, formerly Cindy Dawn Surface v. Jeanette L. Surface Gilbert, Guardian of the Estate of Cindy Dawn Surface and American Casualty Company of Reading, Pennsylvania, a foreign corporation

No. 25808 Filed: (7/16/99), (Per Curiam).

In litigation over the corpus of certain funds and an alleged breach of fiduciary duty by the guardian of those funds, the Court affirmed the circuit court's recalculation of prejudgment interest on the award of compensatory damages, vacated the circuit court's denial of postjudgment interest on the award of punitive damages and attorney's fees, and remanded for reinstatement of that postjudgment interest.

134. Finley v. Norfolk and Western Railway Company

No. 25816d Filed: (7/16/99), (Workman, J., concurring).

Concurring opinion of Justice Workman.

135. Haynes v. Rhone-Poulenc, Inc.

No. 25366c/d Filed: (7/16/99), (Workman, J., concurring, in part and dissenting, in part).

Concurring, in part, and dissenting, in part opinion of Justice Workman.

136. Fairmont Specialty Services v. The West Virginia Human Rights Commission and Irma P. Voyle

No. 25335 Filed: (7/16/99), (Workman, J.)(Davis, J., and Maynard, J., dissenting)(Starcher, C.J., concurring).

Affirming a final decision of the Human Rights Commission that an employer failed to take appropriate remedial action following complaints of ancestral-based discrimination, and setting forth principles for establishing a claim of ancestral discrimination under the West Virginia Human Rights Act.

137. Wanda Sue Bower, Patricia E. Hawkins, Bobbie Jo Hardesty, Tommy Jay Hardesty, Kent Norman Huffman and Brenda Kay Spencer v. Westinghouse Electric Corporation, a Pennsylvania corporation, and North American Philips Corporation, a Delaware corporation

No. 25338 Filed: (7/19/99), (McGraw, J.)(Maynard, J.,dissenting)(McGraw, J., concurring).

Answering certified questions from the United States District Court for the Northern District of West Virginia, (Judge Irene Keeley), and holding that a cause of action does exist in West Virginia for medical monitoring expenses under certain circumstances.

138. Debbie Sipple, as Administratrix of the Estate of Sidney Ward Sipple, deceased, and Debbie Sipple, individually v. David Starr, individually, and DBA Rocket mart, Inc., a West Virginia corporation, and Petroleum Products, Inc., a corporation

No. 25798d Filed: (7/20/99), (Davis, J., dissenting, joined by Kaufman, J., sitting by special assignment)..

Dissenting opinion of Justice Davis, joined by Judge Kaufman, sitting by special assignment.

139. Fairmont Specialty Services v. The West Virginia Human Rights Commission and Irma P. Voyle

No. 25335d Filed: (7/20/99), (Davis, J., dissenting, joined by Maynard, J.).

Dissenting opinion of Justice Davis, joined by Justice Maynard.

140. Gerald Locke Smith v. Betty M. Rusmisell, Mike Ross, Inc., a West Virginia Corporation, Appellant

No. 25429d Filed: (7/20/99), (Davis, J., dissenting).

Dissenting opinion of Justice Davis.

141. Patricia A. Mallet and Ernest R. Mallet, her husband v. Selbert Pickens and Anita Pickens, his wife

No. 25807 Filed: (7/21/99), (McGraw, J.).

Reversing circuit court grant of summary judgment to defendant land owner in action by a social guest injured at the home of friends, the Court abolished the common law distinction between licensees and invitees, and remanded for further proceedings.

142. William Harmon and Thomas Chiles, Sr. Fayette County Board of Education

No. 25323d Filed: (7/21/99), (McGraw, J., dissenting).

Dissenting opinion of Justice McGraw. (With footnote discussing the persuasive authority of per curiam opinions.)

143. Alice R. Patton, et al. V. Cathy S. Gatson, Clerk of the Circuit Court of Kanawha County, The Board of Review of the West Virginia Bureau of Employment Programs, and Sexton Can Company, Inc.

No. 25814d Filed: (8/2/99), Dissenting opinion of Chief Justice Starcher and Justice McGraw.

Dissenting opinion of Chief Justice Starcher and Justice McGraw

144. State of West Virginia v. Craig D.

No. 25195d Filed: (8/2/99), (Starcher, C.J., dissenting).

Dissenting opinion of Chief Justice Starcher. (Majority opinion filed 12/4/98).

145. Martha E. Wagner v. Workers' Compensation Division and H.J. Thomas Memorial Hospital

No. 25051c Filed: (8/2/99), (Starcher, C.J., concurring).

Concurring opinion of Chief Justice Starcher (Majority Opinion filed 12/11/98).

146. Catherine Reynolds, individually and in her own capacity, and Catherine Reynolds, by and through Roy A. Horning, her power of attorney v. City Hospital, Inc., a West Virginia corporation, and C. Dong Park, M.D.

No. 25831d Filed: (8/11/99), (Starcher, C.J., and McGraw, J., dissenting)..

Dissenting opinion of Chief Justice Starcher and Justice McGraw

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