

FILED

January 6, 2000

DEBORAH L. McHENRY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

January 7, 2000

DEBORAH L. McHENRY, CLERK
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Starcher, C. J., dissenting:

I dissent because there is a key unresolved, material factual issue that precludes summary judgment.

That issue is: what was the reason that automobile springs were in Mr. Bord's office? If the springs were there in connection with a case he was handling as an Assistant Prosecuting Attorney, then they were placed there as part of his official duties as a public employee, and he would be entitled to the immunities inherent in such a status.

But if the springs were placed there as part of Mr. Bord's private practice of law, then the creation of the dangerous conditions, and the negligence that allegedly led to the plaintiff's injuries, were unrelated to and entirely outside the scope of Mr. Bord's employment as a public official.

In this latter event, Mr. Bord would not be covered by any immunity for the claims brought by the plaintiffs.

This issue was never resolved in the circuit court, and should have been -- either by stipulation, or trial by a jury, if necessary. Summary judgment was inappropriate.

I am authorized to say that Justice McGraw joins in this opinion.