

No. 32522 – *Delmus Burge v. Kenneth Fortney and The Equitable Life Assurance Society*

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RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Starcher, J., concurring:

I write separately to note the limited scope of this Court’s opinion in the instant case. The opinion does not uphold or validate any current statute, including the 2004 version of *W.Va. Code*, 38-8-1. And importantly, this Court’s opinion in the instant case has no precedential value, before this Court or in our trial courts, as to the effectiveness or scope of any statute purporting to exempt an “IRA” from attachment or execution.

If a contractor adds inflated processing charges and thereby rips off a subcontractor, and then the contractor puts the money in his “IRA” account – is the subcontractor barred from getting to the money, just because it is stashed in an “IRA?”

I think that the due process, open courts/certain remedy, and takings clauses of the *West Virginia Constitution* protect the subcontractor’s right to get the money back, whatever the Legislature may say. And I doubt that the Legislature intended to allow a debtor to hide money from legitimate creditors, by just putting that money in an account and calling it an “IRA.”

There are many, many kinds of bank accounts, certificates of deposit, etc. that one can call an “IRA.” It remains to be seen whether they can be used to avoid paying one’s just debts. These issues are something that we may have to thrash out in the proper case.

Accordingly, I concur.