

No. 32578 – *George Butler Wilson v. William Bernet, Vanderbilt University, and Thomas Gillooly*

FILED

December 15, 2005

Starcher, J., concurring:

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

I concur in this Court’s opinion and judgment in the instant case.

I write separately to note that this Court’s opinion decidedly does NOT create a blanket civil liability “exoneration” or “immunity” for experts who engage in criminal or similarly outrageous misconduct, and who injure others by that misconduct.

Experts who commit perjury, conspire to obstruct justice, commit forgery, etc., remain civilly liable for all damages inflicted on victims of the experts’ misconduct. *See, e.g., Kiko v. Hingle*, 318 F.3d 639 (5th Cir. 2003) (case below, 1999 WL 508406, E.D.La., 98-2189) (expert not civilly immune for pre-testimonial activities). For example, under this Court’s opinion in the instant case, the late Fred Zain, West Virginia’s “poster boy” of corrupt experts, *see Matter of Investigation of West Virginia State Police Crime Laboratory, Serology Div.*, 190 W.Va. 321, 438 S.E.2d 501 (1993), would be civilly liable to his victims.