

No. 33326 *Roberts v. West Virginia American Water Company, et al.*

Starcher, J., concurring:

FILED
December 26,
2007

released at 10:00 a.m.
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

I write separately to note that the Court found that the defendants, the water company and its contractors, did not have any continuing duty regarding the property in question, and this finding is not challenged on appeal. That is, the defendants did a construction job and were, under the stipulated law and facts of the case, quit of any further responsibility for the land. The right-of-way owner, the county commission, did pay damages to the plaintiff – and properly so, because the commission had a continuing duty to maintain and use its property right so as not to unreasonably injure the public, or landowners like the plaintiff. The Court’s opinion in the instant case should not be misread to relieve a property right owner of such a continuing duty.

This stated, accordingly, I concur.