

Ketchum, J., concurring:

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OF WEST VIRGINIA

An expensive egg opines again.

I agree with the majority’s finding that the plaintiff presented no evidence as to the testator’s lack of testamentary intent or undue influence.

I am writing separately to point out that this is yet another case verifying my theory that “[r]etained experts are like eggs. You can buy them by the dozen – they are just more expensive.” *Perrine v. E.I. du Pont de Nemours and Co.*, 225 W.Va. 482, 582, 694 S.E.2d 815, 915 (2010) (Ketchum, J., dissenting, in part, and concurring, in part).

Time and again, I see lawyers presenting “experts” who testify about matters that are easily within the everyday knowledge and experience of a lay juror. This unwarranted testimony adds great expense to the litigants, and lines the pockets of self-proclaimed experts. It is bad enough that litigants must pay exorbitant hourly rates to lawyers, much less pay fees for unnecessary expert testimony in their search for justice.

In this case, a lawyer was hired as a paid expert to testify as to the intent of the decedent, and whether undue influence was exerted upon the decedent. Are juries so dumb that they must hear a hired lawyer’s expert opinion as to a person’s “intent” or “undue influence”? Pretty soon expert lawyers will be paid to opine as to which car ran the red light in traffic accident cases, and what each car driver was thinking during the collision.

I wonder, how much did this egg cost the appellant? How can a “big city” lawyer from Huntington be allowed to testify in rural Clay County about a testator’s intent to make a will, and whether the testator was acting under some influence that was undue? The law is clear that an expert’s opinion evidence is inadmissible on any matter to which the jury is as competent to render an opinion as a paid lawyer expert from Huntington. *See* Syllabus Point 7, *Lawrence Adm’r v. Hyde*, 77 W.Va. 639, 88 S.E. 45 (1916). The law is just as clear that an “expert opinion cannot be offered as to the subjective intent of an individual.” Syllabus Point 3, *State v. Mitter*, 168 W.Va. 531, 285 S.E.2d 376 (1981).

At the rate we are going, we might as well abolish juries that decide everyday factual issues, and turn every case over to a panel of self-proclaimed experts to tell us what the litigants did and what they were thinking. At least, I think that’s my thinking . . . or maybe you should pay for an expert lawyer to testify what *he* thinks I am thinking.