

No. 32266 - State ex. rel. Nancy Vedder v. Honorable Paul Zakaib, Jr., Judge of the Circuit Court of Kanawha County; and Nationwide Mutual Insurance Company

FILED

June 15, 2005

released at 3:00 p.m.

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

Benjamin, Justice, concurring:

I concur with the majority's decision to deny the requested writ of mandamus in the instant matter and agree that Petitioner was dilatory in filing her motion to amend her complaint. I write separately to point out timing issues related to Petitioner's initiation of suit against other defendants in this matter which I find troubling.

The automobile accident underlying Petitioner's initial complaint occurred on March 16, 2001. Shortly thereafter, Petitioner retained counsel who, by letter dated April 19, 2001, requested that Respondent store the subject Toyota vehicle until Petitioner's counsel could have an expert examine the same. Notwithstanding this request, and apparently unknown to Petitioner, Respondent sold the vehicle to a salvage yard in May 2001. After a contact by Petitioner's counsel in January 2002, Respondent informed Petitioner's counsel, by letter dated January 11, 2002, that the vehicle had been sold to a salvage yard. Within one week, on January 17, 2002, Respondent provided Petitioner's counsel with documents identifying the vehicle's purchaser. Petitioner, therefore had actual knowledge of the disposition and location of the subject vehicle by mid-January 2002. It perhaps goes without saying that had Petitioner acted at this point, the outcome on this appeal would arguably be different from that reached by the Court.

More than one year after receiving the information regarding the vehicle's sale and