

No. 24479 - Albert Cable; Brenda Cable; David Cable; Roger Cable; Linda Cable, Singly, and as Legal Guardian and Next Friend of Brittany Cable, her infant child; Claude White; Chloe White; Brian Bullock; Angela Bullock; Patricia Bullock; Timothy Bullock; Mary Hall; Grady Hall; Joseph Hundley and Allene Hundley v. Tennis Hatfield, Clerk of the Circuit Court of Mingo County, West Virginia, and Marrowbone Development Company

Starcher, Justice, concurring, in part, and dissenting, in part:

My impression is that the circuit clerk didn't file plaintiffs' case in this matter, and sent the papers back, not because there was no civil case information sheet ("cover sheet") -- but because there wasn't enough of a filing fee. We have ruled, and I agree, that the clerk was wrong about the fees.

With respect to the civil case information sheet, the clerk could have called the attorney and requested that a cover sheet be faxed, as we approved in *Plum v. Camden-Clark Foundation, Inc.*, 201 W.Va. 229, 496 S.E.2d 179 (1997).

So, the majority opinion holds that a picayune oversight by an attorney is adequate grounds to deny 16 people their right to adjudication of their legal claims. I see no compelling reason for us to impose such a harsh result on innocent people.

What we are saying to the plaintiffs in the instant case, in essence, is: "tough luck." This is a phrase that we should avoid, in the judicial repertoire, when more equitable alternatives are available.

Moreover, even if the decision to bar the plaintiffs in the instant case from using the courts was a fair one, the rule adopted by the majority is too broad. What about *pro se* litigants who don't know about civil case information sheets? What if an attorney's secretary forgets to put the sheet in the envelope?

It would be better to explicitly indicate that appropriate equitable relief may be available in these sorts of circumstances, rather than to issue unnecessarily broad rules that may have draconian results for innocent people -- that we will have to correct in future cases.

I therefore concur as to the fees issue and dissent as to the civil case information sheet issue.