

No. 24636 -- Diana Wade, et al. v. K.M. Chengappa, M.D., Donald Blum, M.D., and Wetzel County Hospital Association

FILED

July 20, 2000

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OF WEST VIRGINIA

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Starcher, J., dissenting:

In *West Virginia Department of Highways v. Fisher*, 170 W.Va. 7, 289 S.E.2d 213 (1982), we considered the circumstances of a doctor, who had practiced medicine in a rural county in excess of 40 years, being sued by the Department of Highways in an eminent domain proceeding. We held that because some of the jurors had a doctor-patient relationship with the doctor, the Department of Highways did not get a fair trial. We stated at Syllabus Point 2:

Where a physician-patient relationship exists between a party to litigation and a prospective juror, although such prospective juror is not disqualified *per se*, special care should be taken by the trial judge to ascertain, pursuant to *W.Va. Code*, 56-6-12 [1931], that such prospective juror is free from bias or prejudice.

We therefore reversed the verdict awarding compensation to the doctor and sent the case back to the circuit court for a retrial.

The majority opinion has turned our holding in *Fisher* on its head. The focus of *Fisher* was how much money the doctor-landowner should receive from the State in an eminent domain proceeding. We held that the doctor's medical relationship with some jurors was too strong, and set aside the verdict.

In the instant case, the defendant doctor is being sued for medical malpractice. The competency of the doctor to practice medicine is being challenged. On the jury panel were people who

had received medical care from the doctor, or from the doctor's wife. The majority opinion turned *Fisher* on its head to conclude that because there was no *per se* disqualification of jurors simply because of a doctor-patient relationship, then there should be no disqualification at all. This is absurd.

The medical competency of the defendant doctor was being challenged. It was totally unfair for the plaintiff's case to be judged by jurors who relied upon the competency of the defendant doctor and his doctor wife for their own medical care. Our holding in *Fisher* cries out for a reversal of the jury's verdict, not an affirmance.

I therefore dissent.