

No. 28663 *Adalaine Stillwell, et al. v. The City of Wheeling, et al.; Colaianne Construction Inc., a West Virginia Corporation*

FILED

January 11, 2002
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

January 14, 2002
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

McGraw, Chief Justice, dissenting:

In this case the veteran trial judge found that the jury's verdict could not be supported by the evidence in the case and made a decision to grant the plaintiff a new trial. As the majority indicates, we review such a decision only for an abuse of discretion, and we look more favorably upon orders granting new trials than those denying the same.

“ ‘It takes a stronger case in an appellate court to reverse a judgment awarding a new trial than one denying it and giving judgment against the party claiming to have been aggrieved.’ Point 1, Syllabus, *The Star Piano Co. v. Brockmeyer*, 78 W. Va. 780 [, 90 S.E. 338 (1916)].” Syl. pt. 2, *Young v. Duffield*, 152 W. Va. 283, 162 S.E.2d 285 (1968).

“An appellate court is more disposed to affirm the action of a trial court in setting aside a verdict and granting a new trial than when such action results in a final judgment denying a new trial.” Syl. pt. 4, *Young v. Duffield*, 152 W. Va. 283, 162 S.E.2d 285 (1968).

Syl. pts. 1, 2, *In re State Public Building Asbestos Litigation*, 193 W. Va. 119, 454 S.E.2d 413 (1994), *cert. denied*, *W.R. Grace & Co. v. West Virginia*, 515 U.S. 1160, 115 S.Ct. 2614, 132 L.Ed.2d 857 (1995). I simply do not feel that the appellants' case was strong enough to merit the reversal of the trial court. I would have permitted the lower court to proceed with the new trial in this case. Therefore I must respectfully dissent.