No. 29163 --Quintain Development, LLC, a limited liability company organized to do business in the State of West Virginia v. Columbia Natural Resources, Inc., a Texas corporation authorized to do business in the State of West Virginia

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Maynard, Justice, dissenting:

I dissent from the majority opinion because I believe the language in the easements originally obtained by United Fuel Gas Company, and now owned by CNR, should be read just as it is written. The language is not ambiguous or complicated; therefore, no interpretation is needed. Let me pause to state, however, that I realize we live in a time when prominent politicians argue about the meaning of the word "is." Therefore, I am not surprised that reasonable minds might differ regarding the definitions of "damages" and "removal."

Nonetheless, if the easements which apply to the Vinson and Baach tracts were read as they are written, I believe the majority would have reached a different result. The easements begin with an understanding between the parties that the gas company's pipelines will not interfere with the removal of coal or timber from the premises. The surface and mineral owners clearly reserved that right for themselves. The easements then state that the gas company will pay "any damages which may arise in the future from the maintaining, operating, and removing of said pipe line."

Based on this language, the circuit court ordered the gas company to "remove" and relocate the pipeline at its own expense. The majority opinion reverses the circuit court's ruling by stating that the language at issue refers only to "*damages* sustained from CNR's operation, maintenance, and removal

of the pipeline." The opinion goes on to state that "removal" does not encompass "relocation;" consequently, the easements do not contemplate which party should pay relocation costs. The majority concludes that Quintain should pay because (1) Quintain was aware of the existence of the pipeline when it acquired its right to mine and (2) Quintain benefitted from the relocation.

I believe this interpretation overlooks the intent of the parties. The easements clearly state that the gas company will pay for the removal of the pipeline. Surely the term "removal" is elastic enough to include "remove and relocate." This language needs no interpretation. The pipeline was removed by CNR because it interfered with the removal of coal from the premises. Under these circumstances, the easements state that the gas company must pay.

Accordingly, I respectfully dissent.