

FILED

December 4, 2001

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

RELEASED

December 5, 2001

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Maynard, Justice, concurring:

I concur with the result reached in this case. However, I would hold that the appellee's workers' compensation funds are not exempt from Ms. Feliciano's claim, regardless of what form the funds are now in, based on the fact that the appellee committed an *intentional* tort against Ms. Feliciano.

Even though W.Va. Code § 23-4-18 (2001) provides that compensation paid to employees or their dependents "shall be exempt from all claims of creditors and from any attachment, execution or assignment," there are important public policy considerations that override this exemption. For example, the Legislature excepted from this exemption enforcement of orders for child support or spousal support. Obviously, in crafting this code section, the Legislature found the financial support of children and spouses to be of greater importance than the guarantee that an injured employee in need of support receive his or her entire compensation award. Likewise, I would provide an exception to W.Va. Code § 23-4-18, where the beneficiary of a workers' compensation award committed an intentional act which resulted in harm to another person.

The facts in this case show that the appellee fired a shotgun into Ms. Feliciano's abdomen, causing her to sustain serious and permanent injuries. As a result, a jury returned a verdict of \$939,450 in favor of Ms. Feliciano. I am unable to believe that the Legislature intended to shield the appellee from

judgment under these circumstances. Certainly, it was not the intent of the Legislature in enacting W.Va. Code § 23-4-18, to protect from judgment an intentional tortfeasor like the appellee, while leaving an innocent victim like Ms. Feliciano with absolutely no legal recourse to receive needed and deserved compensation.

Even if the appellee had his workers' compensation check in his back pocket or in his piggy bank at home, I would hold that it is not exempt from Ms. Feliciano's claim. The time-honored principles that innocent victims of wrongdoers should be compensated for their injuries and intentional tortfeasors should have to pay for the harm they have caused combine, in this case, to mandate the result reached by the majority regardless of what the appellee did with his compensation check after he received it.

Accordingly, I concur with the majority decision in this case. Also, I am authorized to state that Justice Davis joins me in this concurrence.