

No. 31190 – *State of West Virginia ex rel. Darrell V. McGraw, Jr., Attorney General v. National Fuels Corporation, a Delaware corporation, and Derek Fredette, individually and as President and Chief Executive Officer of National Fuels Corporation*

FILED

June 30, 2004

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

Albright, Justice, dissenting:

This case concerns a motion for summary judgment for a permanent injunction where the trial court had previously granted an effective preliminary injunction. Subsequently, the trial court refused to delay the hearing for the permanent injunction so that an appointed guardian ad litem might have a better opportunity to confer with his ward, an inmate of the federal correctional system, who could not be reached at the time. The record indicates that the guardian ad litem could not reach his ward because the ward was being transferred from one federal correctional institution to another. A hearing on the summary judgment motion was held and summary judgment for the permanent injunction was entered, notwithstanding the inability of the guardian ad litem to contact and talk with his ward.

The majority opinion concludes that “the lower court judge achieved ‘substantial justice’ in this case.” I am utterly unable to fathom how or why.

Even a scoundrel is entitled to notice and a fair opportunity to talk to his counsel or guardian ad litem. More importantly, the rush to judgment in this case was not

necessary. A preliminary injunction was in place and delay of a day or two or even a week to search the bowels of the federal correctional system for the guardian ad litem's missing ward posed no threat whatever to the public interest or the orderly functioning of the judicial system. Most importantly, the carefully crafted rules of this Court permitting the substitution of a guardian ad litem for what was previously called a committee for an incarcerated person are made virtually meaningless by the cavalier disregard of those rules and implicit sanction of such cavalier treatment evidenced by the majority opinion.

Notice and opportunity to be heard are minimal standards of due process and fairness. The majority has redefined "substantial justice" to exclude these two bedrock principles.

Accordingly, I respectfully dissent. I am authorized to state that Justice Starcher joins in this dissent.