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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Maynard, Chief Justice, dissenting:

I dissent in this case because I believe the majority has been inconsistent with regard to the standards it has imposed upon the Office of the Chief Medical Examiner (“OCME”).

Approximately seven years ago, this Court upheld a judgment rendered against the State’s Chief Medical Examiner, Dr. Irvin Sopher, in the amount of \$185,000.00, which included \$50,000.00 in punitive damages, for the alleged removal of a decedent’s heart during an autopsy without authorization of the decedent’s family. *Coleman v. Sopher*, 201 W.Va. 588, 499 S.E.2d 592 (1997). In that case, Dr. Sopher had performed the autopsy at the family’s request to determine whether occupational pneumoconiosis had contributed to the decedent’s death. Upon receiving a denial of occupational pneumoconiosis survivors’ benefits from the Workers’ Compensation Division, the family had the body exhumed for a second autopsy. At that point, the family allegedly discovered that the decedent’s heart had been removed during the first autopsy. The family filed suit alleging intentional infliction of emotional distress, conversion, and outrageous conduct. Upon appeal, this Court did not find “the award of \$135,000.00 in compensatory damages for the emotional suffering of three

separate individuals [the decedent's family] to be monstrous, enormous, at first blush beyond all measure, unreasonable or outrageous.” *Coleman*, 201 W.Va. at 607, 499 S.E.2d at 611 (footnote omitted). Instead, the Court found that Dr. Sopher's alleged attempt to conceal the removal of the decedent's heart amounted to “willful, reckless indifference and disregard of the Colemans' rights.” *Id.*, 201 W.Va. at 603, 499 S.E.2d 607.¹

Despite the decision in *Coleman* where this Court held Dr. Sopher liable for mishandling body parts, the majority now curiously refuses to uphold the termination of an employee of the OCME for the same conduct—mishandling of body parts. In the present case, the evidence showed that sometime in early to mid 1999, Mr. Sloan discovered additional remains of a body he had previously released to the Charleston Mortuary Service for cremation in July 1998. At that time, Mr. Sloan called the Charleston Mortuary Service and told James Lowry about this discovery. He advised Mr. Lowry that he would let him know what was going to be done after he discussed the matter with Dr. James Kaplan, the Chief Medical Examiner.² However, Mr. Sloan did not advise Dr. Kaplan that he had found the additional remains and no further action was taken.

¹I dissented to the decision in *Coleman* because I did not believe that the evidence established that a tort had been committed. Also, I believed the circuit court abused its discretion by admitting certain testimony during the trial. *Coleman*, 201 W.Va. at 607-08, 499 S.E.2d at 611-12.

²Dr. Kaplan replaced Dr. Sopher as the State's Chief Medical Examiner in 1997.

On March 15, 2000, a morgue technician discovered the additional remains in the cooler of the OCME. When confronted about the matter, Mr. Sloan told the Office Administrator at OCME that he knew that the additional remains were in the cooler, but he “got busy and forgot about it.” Thereafter, the OCME terminated Mr. Sloan’s employment for failing to notify “anyone in the office that a serious mistake had been made in regard to releasing remains in an improper and erroneous manner.”

The majority states that this case “reveals a very unsatisfactory portrait of the OCME as an entity” yet, concludes that Mr. Sloan’s participation in the events was “minimal.” Maj. op. at 12. Such a conclusion is directly contrary to the evidence. Not only did Mr. Sloan fail to disclose the discovery of the additional remains for over a year and a half, the evidence shows that he was the person who authorized the release of the body in July 1998, failing at that time to verify which remains were actually being released. The majority obviously wants to hold the OCME accountable for these mistakes and is even willing to permit an award of punitive damages for such conduct. However, the majority is unwilling to give the OCME the opportunity to remedy these errors by terminating the employees who are responsible. In my opinion, if the majority is going to allow big verdicts against the OCME to stand as it did in *Coleman*, then it needs to permit the OCME to take appropriate steps to ensure that these mistakes do not happen again. By doing otherwise, as in this case, the majority is being both inconsistent and unfair. Accordingly, I respectfully dissent.

