

No. 31406 – Karen L. Postlewait v. Ohio Valley Medical Center, Inc., a Corporation, et al., and Ohio Valley Medical Center, Inc., a Corporation, and The Estate of Robert L. Postlewait, by Eric Postlewait, Fiduciary

FILED

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OF WEST VIRGINIA

Maynard, Justice, dissenting:

Nemo ex suo delicto meliorem suam conditionem facere potest. This dissent begins with a law school Latin phrase which we commonly state as “no man should profit from his own wrong.” (Literally it translates as no one can make his condition better by his own misdeed). It is a venerable old maxim in equity and it is the reason I dissent in this case. The facts here are straightforward. Mrs. Postlewait pushed her husband off a porch causing him to fall onto concrete and suffer a serious brain injury that ultimately resulted in his death. Thereafter, Mrs. Postlewait filed a medical malpractice/wrongful death action against her husband’s medical providers and successfully negotiated a settlement netting herself more than half a million dollars! The circuit court refused to approve the settlement, but the majority has determined that there is “no basis for the lower court’s failure to authorize release of Appellant’s share of settlement funds arising from the wrongful death action.” Maj. Op. at 14. I wholeheartedly disagree.

The majority finds fault with the circuit court’s “fail[ure] to consider the possibility that the alleged negligent acts of the medical providers who treated Mr. Postlewait were the sole proximate cause of his death under the doctrine of intervening causation.” Maj. Op. at 11. However, the majority equally fails to consider the possibility that Mrs.

Postlewait's misconduct in pushing her husband off the porch played a significant role in her husband's death. Clearly, the chain of events that led to Mr. Postlewait's death were directly put in motion by Mrs. Postlewait. Given these circumstances, I am unable to find that Mrs. Postlewait is entitled to profit from her husband's death. Accordingly, I respectfully dissent.