

No. 31423 – Jaclyn Burless and Brinley Price, individually and as parents and natural guardians of Alexis Price, a minor v. West Virginia University Hospitals, Inc., a West Virginia corporation; and University of West Virginia Board of Trustees, a West Virginia corporation

FILED

June 30, 2004

released at 3:00 p.m.

Maynard, Chief Justice, concurring, in part, and dissenting, in part:

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

I agree with the majority opinion that the circuit court properly granted summary judgment on the issue of actual agency. I disagree, however, with the majority opinion's finding that the circuit court erred in granting summary judgment on the issue of apparent agency.

I believe the record clearly shows that there was no apparent agency. First, Ms. Burless and Ms. Pritt signed an unambiguous disclaimer that stated: "I understand that the faculty physicians and resident physicians who provide treatment in the hospital are not employees of the hospital." The majority opinion, in discounting this disclaimer, reasons that "[t]he WVUH disclaimer provision presupposes that all patients can distinguish between 'faculty physicians,' 'resident physicians' and any other type of physician having privileges at the hospital." This reasoning baffles me. If *both* faculty physicians *and* resident physicians are non-employees, why is it necessary to distinguish between them? Second, the evidence demonstrates that neither Ms. Burless nor Ms. Pritt relied on any representation by the hospital that their physicians' status was that of agent. Finally, the evidence shows that

Ms. Burless chose her own physician, and Ms. Pritt could have rejected the hospital's choice and chosen another physician. For these reasons, I would have affirmed the circuit court's grant of summary judgment on behalf of the hospital on the issue of apparent agency.

Accordingly, I concur to the majority opinion insofar as it affirms the circuit court's ruling that no actual agency exists. I dissent to the opinion insofar as it reverses the circuit court's ruling on the issue of apparent agency.