

No. 31545 – *Rebecca Sprout v. The Board of Education of the County of Harrison*

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July 21, 2004

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

McGraw, Justice, dissenting:

I dissent from the majority opinion because whether the parties entered into a binding settlement agreement is a question for the trier of fact and is not a question properly resolved at the summary judgment stage. “As a general proposition, it is recognized that the questions of whether parties have reached a meeting of minds in an agreement situation and whether their undertakings have involved mutuality, are ordinarily ones of fact.” *Conley v. Johnson*, 213 W.Va. 251, 254, 580 S.E.2d 865, 868 (2003). “Further, it is has been held that summary judgment is rarely appropriate where there is a meeting-of-the-minds question.” *Id.* See Syl. pt. 8, *Poling v. Pre-Paid Legal Services, Inc.*, 212 W.Va. 589, 575 S.E.2d 199 (2002) (“‘Generally, the existence of a contract is a question of fact for the jury.’ Syl. Pt. 4, *Cook v. Heck’s, Inc.*, 176 W.Va. 368, 342 S.E.2d 453 (1986).”).

The evidence in this case reveals that the Board voted to offer Ms. Sprout the sum of \$17,000.00, plus work experience credit, to settle her grievances. Through its president, the Board extended the offer. In response, Ms. Sprout inquired whether the various normal withholdings would be taken out of the offered amount, to which the Board president responded affirmatively. Ms. Sprout accepted the offer. Thereafter, the Board members were advised by their counsel they might be personally liable for the settlement amount. Ultimately, the Board denied that any settlement agreement had been reached.

The issue of whether Ms. Sprout and the Board had a “meeting of the minds” with respect to settlement of Ms. Sprout’s grievances presents a question for the trier of fact, not for the trial judge on summary judgment and certainly, not for this Court on appeal. “[D]isputes about whether a contract has or has not been formed as the result of words and conduct over a period of time are quintessentially disputes about states of mind. . . . these subjective states and objective manifestations present interpretive issues traditionally understood to be for the trier of fact.” 4A M.J. Contracts §92, p. 546.

Because whether a meeting of the minds occurred in this case is a factual question to be resolved by a jury, rather than a legal one, I must dissent from the majority.

Based upon the foregoing, I respectfully dissent.