

No. 31759 – *West Virginia University/Ruby Memorial Hospital v. West Virginia Human Rights Commission, on behalf of Peggy J. Prince, and Peggy J. Prince, individually*

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OF WEST VIRGINIA

Starcher, J., dissenting:

I dissent because there was substantial evidence that supported the Human Rights Commission’s ruling.

There is a symbiotic, day-to-day operational relationship between WVU and WVUH that belies any “separate entity” claim. *See* Syllabus Point 10, *Queen v. University Hospital*, 179 W.Va. 95, 365 S.E.2d 375 (1987).

Moreover, the “separate entity” claim by WVU was never even considered by the HRC – because WVU did not raise it before the HRC.

In the proceedings before the HRC, WVU presented an ever-changing “moving target” series of purported non-discriminatory explanations for its conduct. Each explanation, as it arose, was shot out of the water by the actual evidence.

Then, at the circuit court level, with the record closed, WVU brought up the “separate entity” argument for the first time – at a time when Ms. Prince was precluded from offering more evidence to show the ongoing cooperation of the two entities in discriminatory conduct. Ms. Prince was simply “sandbagged”.

I would affirm the HRC’s ruling. Accordingly, I dissent.