

No. 32779 - Holly D. Heldreth v. Dr. Ali Rahimian and Regional Women's Health Care, Inc.

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

Davis, C.J., concurring:

In this proceeding, the majority of the Court has found that the trial court committed error in the method it used to determine attorney fee's in this case. I fully concur in the decision reached by the majority's opinion. I have chosen to write separately, however, to clarify Syllabus point 6 thereof.

In Syllabus point 6 of the majority's opinion, the Court has held that "[w]hile fee structures that involve a contingent-fee arrangement are clearly enforceable despite the existence of a fee-shifting statute, attorneys are not entitled to receive both the statutory fee award and the full amount of the contingent fee." I believe this syllabus point is in artfully constructed. "Its present wording is susceptible of misinterpretation and should be more narrowly drawn." *Taylor v. Sears, Roebuck & Co.*, 190 W. Va. 160, 165, 437 S.E.2d 733, 738 (1993) (Workman, C.J., concurring).

I believe that Syllabus point 6 intended to say, and should have said, that a contingency fee agreement is enforceable despite the existence of a fee-shifting statute. However, there must be an off-set so that an attorney only recovers, under the fee-shifting statute, that amount of the award that is above what was obtained by the attorney under the

contingency fee agreement. The remaining amount of the statutory fee award goes to the client.

In view of the foregoing, I respectfully concur.