

FILED

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RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Davis, C.J., concurring:

In a mere matter of days, this Court has issued opinions in two strikingly similar cases. Both of these cases required expert testimony to provide causation evidence as to the plaintiffs' injuries. In both of these cases, the plaintiffs failed to supplement their expert disclosures, as required by West Virginia Rule of Civil Procedure 26(e)(1)(B), to alert the defendants as to the expanded scope of their experts' testimony. And in both cases the circuit courts properly ruled in favor of the defendants, recognizing the plaintiffs' failure to so comply. However, in rendering a decision in these cases, the majority of this Court has not ruled consistently. In the case of *Estate of Fout-Iser v. Hahn*, ___ W. Va. ___, ___ S.E.2d ___ (No. 33189 May 21, 2007), the majority of this Court reversed the circuit court's order essentially excusing the plaintiffs in that case from complying with the requirements of Rule 26(e)(1)(B); I dissented from that opinion. In the case *sub judice*, however, the majority has correctly affirmed the sanctions imposed upon the plaintiff by the circuit court.¹

¹That is not to say, however, that I necessarily would have chosen to impose the same sanctions upon the plaintiff had I been in the trial court's shoes. Be that as it may, a trial court has discretion to impose sanctions for discovery violations, and, absent an abuse of such discretion, the trial court's ruling must stand. *See* W. Va. R. Civ. P. 37 (authorizing trial court to impose sanctions for "[f]ailure to cooperate in discovery"); Syl. pt. 1, in part, *McDougal v. McCammon*, 193 W. Va. 229, 455 S.E.2d 788 (1995) ("[T]he West Virginia

Because the majority opinion in this case appreciates the importance of enforcing the West Virginia Rules of Civil Procedure “to secure the just, speedy, and inexpensive determination of every action,”² I concur.

Rules of Civil Procedure allocate significant discretion to the trial court in making . . . procedural rulings. Thus, rulings on . . . the appropriateness of a particular sanction for discovery violations are committed to the discretion of the trial court. Absent a few exceptions, this Court will review . . . procedural rulings of the circuit court under an abuse of discretion standard.”).

² W. Va. R. Civ. P. 1.