No. 33190 *Michael Worley and Cynthia Worley, his wife, v. Beckley Mechanical, Inc., et al.*

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Benjamin, Justice, dissenting:

Despite this Court's repeated admonitions that it should not sit as a superlegislature, re-writing statutes under the guise of statutory interpretation, that is exactly what the Majority has done in this matter. In *Subcarrier Communications, Inc. v. Nield*, 218 W. Va. 292, 624 S.E.2d 729 (2005), this Court recently recognized:

> "'[I]t is not for [courts] arbitrarily to read into [a statute] that which it does not say. Just as courts are not to eliminate through judicial interpretation words that were purposely included, *we are obliged not to add to statutes something the Legislature purposely omitted*.' *Banker v. Banker*, 196 W. Va. 535, 546-47, 474 S.E.2d 465, 476-77 (1996) (citing *Bullman v. D & R Lumber Company*, 195 W. Va. 129, 464 S.E.2d 771 (1995); *Donley v. Bracken*, 192 W. Va. 383, 452 S.E.2d 699 (1994)). ([E]mphasis added). *See State ex rel. Frazier v. Meadows*, 193 W. Va. 20, 24, 454 S.E.2d 65, 69 (1994). Moreover, '[a] statute, or an administrative rule, may not, under the guise of "interpretation," be modified, revised, amended or rewritten.' Syl. pt. 1, *Consumer Advocate Division v. Public Service Commission*, 182 W. Va. 152, 386 S.E.2d 650 (1989). *See Sowa v. Huffman*, 191 W. Va. 105, 111, 443 S.E.2d 262, 268 (1994)." *Williamson v. Greene*, 200 W. Va. 421, 426-27, 490 S.E.2d 23, 28-29 (1997).

Subcarrier Communications, 218 W. Va. at 299, 624 S.E.2d at 736, quoting, *Longwell v.*

Board of Educ. of County of Marshall, 213 W. Va. 486, 491, 583 S.E.2d 109, 114 (2003). The Court continued, in footnote 10, by stating:

> Likewise, "'[T]he judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines.'" *State ex rel. Blankenship v. Richardson*, 196 W. Va. 726, 735, 474 S.E.2d 906, 915 (1996) (quoting *Lewis v. Canaan Valley Resorts, Inc.*, 185 W. Va. 684, 692, 408 S.E.2d 634, 642 (1991)). Indeed, "'[i]t is not the province of the courts to make or supervise legislation, and a statute may not, under the guise of interpretation, be modified, revised, amended, distorted, remodeled, or rewritten[.]'" *State v. Richards*, 206 W. Va. 573, 577, 526 S.E.2d 539, 543 (1999) (quoting *State v. General Daniel Morgan Post No. 548*, 144 W. Va. 137, 145, 107 S.E.2d 353, 358 (1959)).

Subcarrier Communications, 218 W. Va. at 299, n. 10, 624 S.E.2d at 736, n. 10. *Accord*, *Lucas v. Fairbanks Capital Corp.*, 217 W. Va. 479, 484, 618 S.E.2d 488, 493 (2005); *State ex rel. Orlofske v. City of Wheeling*, 212 W. Va. 538, 546-7, 575 S.E.2d 148, 156-7 (2002).

The statute at issue herein, W. Va. Code § 55-2-15 (1923), clearly and unambiguously provides:

> If any person to whom the right accrues to bring any such personal action, suit or scire facias, or any such bill to repeal a grant, *shall be at the time the same accrues, an infant or insane*, the same may be brought within the like number of years after

> his becoming of full age or sane that is allowed to a person having no such impediment to bring the same after the right accrues, or after such acknowledgment as is mentioned in section eight [§ 55-2-8] of this article, except that it shall in no case be brought after twenty years from the time when the right accrues.

(Emphasis added.) "Where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation." Syl. Pt. 2, *State v. Elder*, 152 W. Va. 571, 165 S.E.2d 108 (1968). Thus, "'[a] statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect' Syl. Pt. 2, *State v. Epperly*, 135 W. Va. 877, 65 S.E.2d 488 (1951)." Syl. Pt. 2, *Kirwan v. Kirwan*, 212 W. Va. 520, 575 S.E.2d 130 (2002). *See also*, *Devane v. Kennedy*, 205 W. Va. 519, 529, 519 S.E.2d 622, 632 (1999) ("Where the language of a statutory provision is plain, its terms should be applied as written and not construed."). West Virginia Code § 55-2-15 is clear and unambiguous. A statute of limitations may only be tolled for reason of insanity if the person is insane *at the time the cause of action accrues*.

Instead of applying the clear and unambiguous statutory language and affirming the Circuit Court of Raleigh County, the Majority has chosen to amend the statutory language to achieve the supposed "general purpose" of the policy underlying the statute to provide for an interval of time *after* the alleged tortious act during which the

plaintiff may become insane and invoke the tolling provisions of W. Va. Code § 55-2-15. *See,* Syl. Pts. 3 & 4, Majority Slip opinion. In an apparent recognition that its decision herein violates all established principles of statutory construction, the Majority adopts a "new" principle of statutory construction to justify its result and allow the plain meaning of a statute to be disregarded where its application "will produce a result demonstrably at odds with the intentions of the drafters." Syl. Pt. 2, Majority Slip opinion. However, to demonstrate the legislative intent necessary under this "new" principle to justify rejection of the statute's plain meaning, the Majority relies not upon language in the statute itself or its legislative history, but upon a past statement by this Court. In *Whitlow v. Board of Education of Kanawha County*, 190 W. Va. 223, 231, 438 S.E.2d 15, 23 (1993), this Court found that W. Va. Code § 55-2-15 was designed to extend the tolling period to protect the rights of infants where those who may act on the infant's behalf fail to do so. Thus, the Court relies upon itself to provide the "legislative" intent which it now uses to disregard the plain meaning of the statute as actually enacted by the Legislature.

The Majority decision herein effectively amends W. Va. Code § 55-2-15 to remedy what the Majority considers to be a policy inadequacy in legislative judgment. This intrusion into legislative prerogative yet again shows the ready inclination by this Court to exceed its proper constitutional role in the governance of this State and to thereby engage in an arrogant judicial activism which, for as long as it manifests itself, will inhibit, indeed

be fatal to, the positive progress of this State.

Previously, this Court has declined to amend or overrule legislation in the face of an argument that the legislation is not meeting its desired goals, noting that "[i]t is up to the legislature and not this Court to decide whether its legislation continues to meet the purposes for which it was originally enacted. If the legislature finds that it does not, it is within its power to amend the legislation as it sees fit." *Verba v. Ghaphery*, 210 W. Va. 30, 36, 552 S.E.2d 406, 412 (2001) (*per curiam*). When specific statutory language produces a result argued to be unforeseen by the Legislature, "the remedy lies with the Legislature, whose action produced it, and not with the courts. The question of dealing with the situation in a more satisfactory or desirable manner is a matter of policy which calls for legislative, not judicial, action." *Verizon West Virginia, Inc. v. West Virginia Bureau of Employment Programs, Workers' Compensation Division*, 214 W. Va. 95, 114, 586 S.E.2d 170, 189 (2003), quoting, *Hereford v. Meek*, 132 W. Va. 373, 388, 52 S.E.2d 740, 748 (1949). Unfortunately, the Majority herein has abandoned this Court's prior "unyielding refrain[] from altering the tenor of a legislative enactment by appending additional elements to a statute. Where a statute is unambiguous, the incorporation of additional words, terms or provisions is not the domain of the courts." *Dailey v. Board of Review, West Virginia Bureau of Employment Programs*, 214 W. Va. 419, 428, 589 S.E.2d 797, 806 (2003). Herein, the Majority has improperly acted as a superlegislature and amended clear statutory

language to produce a result it desired, not what the Legislature desired. This is wrong.

Finally, I must take issue with the Majority's treatment of this Court's prior decision in *Jones v. Trustees of Bethany College*, 177 W. Va. 168, 351 S.E.2d 183 (1986). The Majority notes that *Jones* provides that the right to bring a personal injury action generally accrues at the time an injury is inflicted. Majority Slip Opinion, p. 6. However, the Majority fails to acknowledge that its holding in this matter conflicts with our long-established precedent in *Jones*. In Syllabus Point 3 of *Jones*, this Court held "[w]here a plaintiff sustains a noticeable personal injury from a traumatic event, the statute of limitations begins to run and is not tolled because there may also be a latent injury arising from the same traumatic event." Under *Jones*, the Circuit Court of Raleigh County properly dismissed Mr. Worley's claim. His alleged insanity or mental illness did not exist at the time of the injury, but instead developed as a result of treatment for the injury. As such, it is analogous to the latent injury involved in *Jones* which does not toll the statute of limitations. Therefore, the Majority's decision herein not only conflicts with legislative prerogative, it also conflicts with our own long-established precedent.

For these reasons, I dissent from the Court's decision in this matter.