No. 33194 - Phillips v. Larry's Drive-In Pharmacy, Inc.

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

Maynard, Justice, concurring:

I agree with the majority's decision in this case that a pharmacy is not a "health care provider" as defined by W.Va. Code § 55-7B-2(c) (1986) of the Medical Professional Liability Act. Pharmacies are not enumerated in the statute, and in accordance with this Court's long standing rules of statutory interpretation, we cannot add words that the Legislature purposely omitted[1] as is clearly the case here. I am writing separately because I would have gone further than the majority and considered the affidavits of the former legislators.

In this case, the best evidence of legislative intent, which this Court is required to consider when construing a statute,[2] is the affidavits of the legislators who were responsible for formulating the final content of the Medical Professional Liability Act. The affiants were members of the Conferee's Committee that dealt with Senate Bill 714 known

[1]*Banker v. Banker*, 196 W.Va. 535, 546-47, 474 S.E.2d 465, 476-77 (1996).

[2]*See* Syllabus Point 1, *Smith v. State Workmen's Comp. Comm'r*, 159 W.Va. 108, 219 S.E.2d 361 (1975) ("The primary object in construing a statute is to ascertain and give effect to the intent of the Legislature.").

as the Medical Professional Liability Act of 1986 and included the Chairman of that Committee as well as the Chairman of the House Judiciary Committee. All of these affiants stated that "pharmacists and pharmacies were never included in the original definitions" set forth in the statute. The affidavits do not detail each legislator's opinion but, rather, prove that the Legislature intentionally excluded pharmacies from the definition of "health care provider" under the statute. I do not see how these affidavits, which are powerful and persuasive evidence of legislative intent, can be ignored. Other courts have considered affidavits from joint conference committee members when ascertaining legislative intent with regard to ambiguous legislation, and I would have done so in this case. *See Silver v. Brown*, 63 Cal.2d 841, 48 Cal.Rptr. 609, 409 P.2d 689 (1966).

In the end, absent the evidence provided by the former legislators, the majority still reached the proper decision in this case. Accordingly, I concur.