No. 34748 - *Danny L. Benson v. AJR, Inc. A West Virginia Corporation, and John M. Rhodes*

Benjamin, J., concurring:

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OF WEST VIRGINIA

It is often said that "beauty is in the eye of the beholder." How apt this phrase seems to sometimes be when applied to judicial decisions. That it applies so often in a time when group after group publicly complain that judges should "just follow the law" is ironic since the same groups seem to have little hesitancy to publicly judge judges based not on the method and legal accuracy of what the court actually did, but rather on whether the result is deemed "good" (*i.e.*, pro-business, pro-labor, pro-Democrat, pro-Republican, pro-this group, pro-that group) or "bad" (*i.e.*, anti-business, anti-labor, anti-Democrat, anti-Republican, anti-this group, anti-that group). When judges must rely on the transparency of their decisions for their defense, the process of partisanship by this group or that becomes all the more easier.

I sense this is a case which lends itself to such partisanship. Benson is not a likable plaintiff. However, what the Defendants essentially want this Court to do is to save them from a lawful business contract into which they freely and consciously entered. In other words, the Defendants seek this Court to ignore the "rule of law" and, despite their bad purchase deal, to save them from themselves *despite the rule of law*.

AJR, Inc., manufactured and welded truck beds. It was a family concern. In 1997, John Rhodes sought to purchase AJR. As part of the deal, Rhodes entered into a legally binding guaranteed employment agreement with Danny Benson, a family member. Such arrangements are not uncommon when family concerns are purchased. Family members often wish to ensure that other family members are guaranteed continued employment for a period of time. Both sides had a full and adequate opportunity to negotiate the terms of the guaranteed employment agreement here. In other words, no one had a gun to his head.

In retrospect, the agreement which Rhodes made seems amazingly narrow. However, it is not for this Court to look beyond the contract since it was freely entered into. Benson was guaranteed eight additional years of employment or the equivalent in pay. He could be terminated with only a one day notice for any reason, though the obligation to pay remained absent Benson doing one of three specific things. From a business sense, the eight years of employment was therefore essentially already factored into the purchase price of AJR. Under the terms of the employment contract, AJR could avoid its binding obligation to pay Benson only if one of three specific things happened: Benson was convicted of a felony (he was not); Benson voluntarily terminated his employment (he did not), or Benson engaged in dishonesty.

When Benson was terminated, the "Reason for Termination" was listed as "Tested Positive for Cocaine." He had never made any representation whether he used or did not use cocaine, though the employer no doubt reasonably assumed he did not. Initially, the Circuit Court of Wood County granted summary judgment, finding Benson's actions to have been "dishonest" as a matter of law. In 2004, this Court reversed the summary judgment, concluding that the term "dishonesty" and whether Benson's termination was because of "dishonesty" was a question of fact for a jury. The Court noted that the employer neglected to make any reference to "dishonesty" on its "Reason for Termination." See *Benson v. AJR, Inc. (Benson I)*, 215 W.Va. 324, 599 S.E.2d 747 (2004).

After a trial, a special verdict form was given to the jury. The special verdict form demonstrated that Benson was not terminated for dishonesty, but rather for drug use. Certainly, one can conclude that Benson should have been terminated. The company had that right and it exercised that right. What the company did not have the right to do, however, was to renegotiate the terms of the contracts surrounding the purchase of AJR, Inc., or, essentially, to have this Court do it for them.

Cases such as these are not easy. However, as with the other judges who have reviewed this matter, I must conclude that the contract should be given effect as written and as agreed to. To do otherwise and render a decision of a "feel good" or "politically correct"

nature would be to engage in situational decision-making, which leads to instability within the legal system and, consequently, a lack of stability and predictability in our state. I do not believe there is a legal basis to overrule the findings of the jury. I therefore concur with the majority opinion.