

No. 30694 *Crystal Johnston Mills and Ronald Nicholas Mills and Ronald Nicholas Mills, as father and next friend of Alyssa Nicole Mills, an infant under the age of eighteen, and Jane Doe, and John Doe v. Krista Watkins and Wanda Watkins and Sarah Long, and Nationwide Mutual Insurance Company, a foreign corporation*

FILED

July 11, 2003

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

Starcher, C. J., concurring:

I concur with the majority’s holding, but write separately to demonstrate, in simpler terms, how I view the holding of the case.

In this case, the plaintiff-teenager was injured in an automobile accident caused by another teenager, the “tortfeasor.” The plaintiff-teenager did not hire a lawyer; instead, she and her mother negotiated with the tortfeasor’s insurance company, Nationwide, themselves. To protect the plaintiff-teenager’s rights, the circuit court later appointed a lawyer to serve as *guardian ad litem*.

The plaintiff-teenager; her legal guardian, the plaintiff-teenager’s mother; the plaintiff-teenager’s father; the *guardian ad litem*; and the circuit court, reviewed and approved the settlement offer and settlement agreement proposed by Nationwide. The settlement offer gave the plaintiff-teenager nearly \$50,000.00 in cash. In return, the plaintiff-teenager signed an agreement that gave up her rights to sue the tortfeasor and the owner of the automobile the tortfeasor had negligently driven, *and* gave up any rights against

Nationwide for its conduct in the course of handling and settling the plaintiff-teenager's claim.

When the plaintiff-teenager reached majority age, she filed suit against Nationwide seeking damages under the Unfair Trade Practices Act, *W.Va. Code*, 33-11-4 [1985].¹ The plaintiff-teenager alleged that Nationwide made misrepresentations during the settlement process that improperly induced the plaintiff-teenager to agree to the settlement. Upon motion by Nationwide, the circuit court dismissed the plaintiff-teenager's complaint under Rule 12(b)(6) of the *Rules of Civil Procedure*, concluding that she had failed to state a claim because the settlement agreement previously signed by the plaintiff-teenager specifically released Nationwide for any misconduct during the settlement process.

Based on these facts, I support the majority opinion's decision to affirm the circuit court's dismissal of the plaintiff-teenager's complaint against Nationwide. The plaintiff-teenager – with the advice and consent of her parents, *guardian ad litem*, and the circuit court – plainly released Nationwide from any and all liability under the Unfair Trade Practice Act. The plaintiff-teenager could have insisted that the language releasing “bad faith” claims against Nationwide be removed from the agreement, but neither she nor her representatives did so. The briefs of the parties in this case presented no reason why that

¹The plaintiff-teenager also filed suit against the tortfeasor seeking additional tort-related damages. The circuit court dismissed this part of the plaintiff-teenager's complaint, and the plaintiff-teenager did not appeal this part of the circuit court's ruling.

plainly-worded release should now be set aside to allow the plaintiff-teenager a “second bite at the apple.”

One other point should be noted about the majority’s opinion: in *dicta*, the majority opinion indicates that the Court found “no indication that Nationwide misrepresented the ‘insurance policy provisions relating to coverages’ during the time that the underlying release and settlement agreement was negotiated and adopted by the parties in this case.” The majority opinion goes on to contend that *guardians ad litem* could face liability for malpractice if they “fail[] to get the full policy limits for [] infant claimants” if we were to accept the plaintiff-teenager’s arguments that Nationwide engaged in unfair trade practices. Because this case is before the Court upon the circuit court’s granting of a Rule 12(b)(6) motion to dismiss for failure to state a claim, there isn’t a lot of record to support or contradict these “findings.” Such “findings” by the Court are also irrelevant, considering the fact that the Court’s decision is guided by the explicit terms of the settlement agreement and not the parol evidence surrounding the signing of the agreement.

That said, I otherwise respectfully concur.