

No. 30740 - Naomi McDavid, on her own behalf and as the personal representative of Oney McDavid, deceased v. United States of America

**FILED**

**July 7, 2003**

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

Maynard, Justice, dissenting:

The majority opinion is result-driven and without a scintilla of legal support. In order to reach its desired result, the majority cavalierly disregards plain statutory language, ignores recent declarations of this Court, and tosses aside the Court's traditional rules of statutory construction.

The majority's newfangled construction of the wrongful death act relies entirely on the words "but may not be limited to" found in W.Va. Code § 55-7-6(c)(1) (1992).<sup>1</sup> According to the majority, these words give a jury in a wrongful death case "almost unfettered discretion" in awarding damages, including damages for the pain and suffering of the decedent between the time of injury and death. The problem with the majority's novel interpretation of W.Va. Code § 55-7-6(c) is that it is directly at odds with W.Va. Code § 55-7-8 (1989) and this Court's previous findings.

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<sup>1</sup>According to W.Va. Code § 55-7-6(c)(1), in part, "[t]he verdict of the jury shall include, but may not be limited to, damages for the following[.]"