No. 31042 – *State of West Virginia ex rel. Richard Brooks v. The Honorable Paul Zakaib, Jr., Judge of the Circuit Court of Kanawha County*

FILED
June 23, 2003
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Albright, Justice, concurring:

While I concur in the result reached in this case, I write separately to express several concerns that I have with the majority opinion. In applying this Court's decision in *Moats v. Preston County Commission*, 206 W.Va. 8, 521 S.E.2d 180 (1999), to the facts of the instant case, the majority overlooks a critical second element to the holdings in that case which address the instantaneous effect of a court's oral rulings. This Court clearly recognized through its holdings in *Moats* that "[g]enerally, an order is effective when a court announces it," and that "the actual physical possession of a written order is not required to effectuate said [oral] order." 206 W.Va. at 10, 521 S.E.2d at 182, syl. pts. 1, 2, in part. What the majority overlooks in applying these principles to the case *sub judice* is that *Moats* does not dispense with the need to reduce oral rulings to writing and to have such orders entered by the trial court. It is significant to note that the order at issue in *Moats* had been "signed contemporaneously with the pronouncement of the order by the mental hygiene commissioner." *Id*. at 12, 521 S.E.2d at 184. Thus, rather than turning on the reduction of an oral ruling to writing, the factual focus in *Moats* was whether physical possession of the written order was a necessary part of effectuating the directive of the order – remanding an involuntary commitment detainee to the sheriff's custody.

By failing to recognize the continuing obligation of parties to reduce oral rulings to writing, the majority unnecessarily creates confusion in a settled area of the law. As the majority acknowledged, the "requirement of a definite and specific order is based upon the longstanding principle recognizing that a 'court speaks only through its orders.'" If the majority was seeking to alter this longstanding rule that requires the entry of written orders, I must vehemently disagree with the majority's reasoning on this point.

I concur with the majority's new point of law as stated in syllabus point five with the additional limitation that the entry of a protective order by the trial court, either pursuant to West Virginia Code § 30-3C-3 (1980) (Repl. Vol. 2002) or under the terms of Trial Court Rule 10.03, can only operate with regard to the copy of the materials physically contained within the court's files that are subject to the order. Obviously, if those same materials are available elsewhere from an original source or pursuant to express waiver of a privilege, the materials are subject to production from those sources and may be used by a party. In most instances, the protective orders contemplated by the terms of West Virginia Code § 30-3C-3 arise out of the court's obligation to assure confidentiality under situations where the statutory privilege has not been extinguished due to express waiver or through the voluntary dissemination of those materials to third parties.

Separate and apart from the statutory privilege, however, the trial courts are clearly authorized to enter orders limiting access to court files pursuant to the provisions of

Trial Court Rule 10.03. Therefore, as the majority finds, when the protections of West Virginia Code § 30-3C-3 are no longer available (due to waiver or availability from an original source), a trial court may still limit access to a copy of the materials actually in a court file. However, pursuant to the express terms of the rule, any order limiting access to court files under Trial Court Rule 10.03 is required to be made with certain express findings that "specify the nature of the limitation, the duration of the limitation, and the reason for the limitation."