

No. 30629—*David Stanley, dba L & D Contractors, Limited Liability Company v. Harrison County Bank, et al.*

FILED

December 11, 2002
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

December 13, 2002
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

McGraw, Justice, dissenting:

A concern I have with this case is that at the end of the day it appears we have a contractor who has gone without compensation while a mining company continues to operate, ostensibly without any intent to ever pay this debt. This appeal presented several very technical issues concerning the priority of liens under the Uniform Commercial Code, and it is understandable that the majority did not wish to disturb the foundations of what is an intricate and delicately constructed legal edifice.

However it is a grave concern to me that this decision suggests that the hundreds of West Virginia businesses, small and large, that supply equipment, supplies, or labor to mining companies have very little security in these transactions. We are often reminded that a coal mining operation creates many indirect jobs beyond the boundaries of the mine for suppliers and contractors, and that these large operations provide much needed jobs to your mom and pop businesses in the smaller communities of this state. However, these jobs are cold comfort if the mining operation never actually makes its promised payments.

It must be especially disheartening to the appellant, and others like him, who supply goods or services to the coal industry, that even after going to the trouble and expense of a lawsuit, and then winning a judgment in court against this defendant, he is still unable to get paid for the work he has performed. What is not clear from the record is why Linn Mining is apparently able to continue doing business without paying the appellant the money it owes him. We have discussed in previous cases that a business must follow all requirements of our corporations act to enjoy its protections. *See, Laya v. Erin Homes, Inc.*, 177 W. Va. 343, 352 S.E.2d 93 (1986); *Southern Electrical Supply Co. v. Raleigh County National Bank*, 173 W. Va. 780, 787, 320 S.E.2d 515, 522 (1984) (“[j]ustice may require that courts look beyond the bare legal relationship of the parties to prevent the corporate form from being used to perpetrate injustice, defeat public convenience or justify wrong. . .” (citation omitted)). It may be that there is still some opportunity for this appellant to recover the money owed to him.

In summation, I recognize that the law must strike a delicate balance between those who provide the necessary capital to support a mining operation, and those who extend their faith and credit by supplying goods or services. The majority has, understandably, chosen a conservative course through a very technical area of our law. Nonetheless, I am concerned about the message this decision might send to those who equip, supply, and support our coal industry.

Therefore, I respectfully dissent.