

SUPREME COURT OF APPEALS OF WEST VIRGINIA

The Estate of Marjorie I. Verba, by Sally Jo Nolan, Executrix v. David A. Ghaphery, M.D., 210 W. Va. 30

552 S.E.2d 406 (2001) · No. No. 27464 · Decided July 25, 2001

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a reduced medical malpractice judgment and upheld the constitutionality of the state's statutory cap on noneconomic damages. The court declined to revisit its prior decision sustaining the cap, rejected challenges based on separation of powers and inflation, and refused to award attorney fees and costs merely because the jury's noneconomic damages exceeded the cap. The opinion includes dissenting views challenging the cap under the state constitutional guarantees of equal protection and a certain remedy.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Davis; McGraw; Starcher
JURISDICTION	West Virginia
DECIDED	July 25, 2001
DOCKET	No. 27464
DISPOSITION	affirmed
PROCEDURAL POSTURE	The estate appealed from the Circuit Court of Ohio County's reduction of a jury's medical-malpractice judgment pursuant to West Virginia's statutory cap on noneconomic damages. The Supreme Court of Appeals granted rehearing after initially affirming the circuit court and, on reconsideration, again affirmed.
STANDARD OF REVIEW	Constitutionality of legislative enactments is reviewed with due restraint; every reasonable construction is used to sustain constitutionality, reasonable doubts are resolved in favor of constitutionality, and invalidity must appear beyond reasonable doubt. For economic classifications, the court applies rational-basis review by asking whether the classification is rationally based on relevant factors, reasonably related to a proper governmental purpose, and applied equally within the class.
PRECEDENTIAL VALUE	Published precedential opinion

PARTIES

The Estate of Marjorie I. Verba, by Sally Jo Nolan, Executrix v. David A. Ghaphery, M.D.

TOPICS

medical malpractice

damages

constitutional law

equal protection

remedies

PRACTICE AREAS

medical malpractice

constitutional law

damages

wrongful death

attorney fees

QUESTIONS PRESENTED

1. Whether West Virginia Code § 55-7B-8, which capped recoverable noneconomic damages in medical-professional-liability actions at \$1,000,000, violated the West Virginia Constitution.
2. Whether the cap violated separation of powers by functioning as a legislative remittitur.
3. Whether inflationary erosion rendered the cap unconstitutional or invalid.
4. Whether attorney fees and costs should be awarded when a medical-malpractice verdict exceeds the statutory cap.

HOLDINGS

1. West Virginia Code § 55-7B-8's \$1,000,000 cap on noneconomic damages in medical-professional-liability actions is constitutional and does not violate the West Virginia Constitution's equal-protection, special-legislation, substantive-due-process, certain-remedy, or jury-trial provisions.
2. The statutory cap is not an impermissible legislative remittitur and does not violate separation of powers because the legislature may alter the common law and set reasonable limits on recoverable damages in civil causes of action.
3. The passage of time and inflationary reduction in the cap's real value do not render the cap unconstitutional or invalid.
4. Attorney fees and costs are not recoverable merely because a prevailing medical-malpractice plaintiff receives a noneconomic-damages verdict exceeding the statutory cap.

KEY QUOTATIONS

“W.Va.Code, 55-7B-8, as amended, which provides a \$1,000,000 limit or “cap” on the amount recoverable for a noneconomic loss in a medical professional liability action is constitutional.” (210 W. Va. 34, 552 S.E.2d 410)

“It is up to the legislature and not this Court to decide whether its legislation continues to meet the purposes for which it was originally enacted.” (210 W. Va. 36, 552 S.E.2d 412)

FACTUAL BACKGROUND

Dr. Ghaphery performed anti-reflux surgery on sixty-eight-year-old Marjorie Verba on February 21, 1996. An autopsy indicated that a surgical nick lacerated her stomach, causing peritonitis and her death within hours after discharge from the hospital. A jury found medical malpractice and awarded \$2,821,000 in damages, including \$2,500,000 under the wrongful-death statute, but the trial court reduced the award under the statutory medical-malpractice cap.

PROCEDURAL HISTORY

A jury found for the estate in a medical-malpractice action and awarded \$300,000 for noneconomic damages, \$21,000 for medical and funeral expenses, and \$2,500,000 to the wrongful-death beneficiaries. The circuit court reduced the judgment to \$1,020,510.51 under W. Va. Code § 55-7B-8. The Supreme Court affirmed, granted rehearing, and reaffirmed its prior decision upholding the cap's constitutionality.

DISPOSITION

affirmed

CASES CITED

- State ex rel. Appalachian Power Co. v. Gainer, 149 W. Va. 740, 143 S.E.2d 351 (1965)
- Atchinson v. Erwin, 172 W. Va. 8, 302 S.E.2d 78 (1983)
- Gibson v. West Virginia Department of Highways, 185 W. Va. 214, 406 S.E.2d 440 (1991)
- Robinson v. Charleston Area Medical Center, Inc., 186 W. Va. 720, 414 S.E.2d 877 (1991)
- Booth v. Sims, 193 W. Va. 323, 456 S.E.2d 167 (1995)
- Perry v. Twentieth St. Bank, 157 W. Va. 963, 206 S.E.2d 421 (1974)
- Gilman v. Choi, 185 W. Va. 177, 406 S.E.2d 200 (1990)
- Mayhorn v. Logan Medical Foundation, 193 W. Va. 42, 454 S.E.2d 87 (1994)
- Lewis v. Canaan Valley Resorts, Inc., 185 W. Va. 684, 408 S.E.2d 634 (1991)
- Griffin v. Southeastern Pennsylvania Transportation Authority, 757 A.2d 448 (Pa. Commw. Ct. 2000)
- Helmick v. Potomac Edison Co., 185 W. Va. 269, 406 S.E.2d 700 (1991)
- Sally-Mike Properties v. Yokum, 179 W. Va. 48, 365 S.E.2d 246 (1986)
- Yost v. Fuscaldo, 185 W. Va. 493, 408 S.E.2d 72 (1991)
- Nelson v. Public Employees Insurance Board, 171 W. Va. 445, 300 S.E.2d 86 (1982)
- Richardson v. Town of Kimball, 176 W. Va. 24, 340 S.E.2d 582 (1986)
- Miller v. Lambert, 196 W. Va. 24, 467 S.E.2d 165 (1995)
- Bowling v. Ansted Chrysler-Plymouth-Dodge, 188 W. Va. 468, 425 S.E.2d 144 (1992)
- Old National Bank of Martinsburg v. Hendricks, 181 W. Va. 537, 383 S.E.2d 502 (1989)
- Hayseeds v. State Farm Fire & Casualty, 177 W. Va. 323, 352 S.E.2d 73 (1986)
- Jenkins v. J.C. Penney Casualty Insurance Co., 167 W. Va. 597, 280 S.E.2d 252 (1981)
- State ex rel. State Farm Fire & Casualty Co. v. Madden, 192 W. Va. 155, 451 S.E.2d 721 (1994)
- Edmonds v. Murphy, 83 Md. App. 133, 573 A.2d 853 (1990), aff'd, 325 Md. 342, 601 A.2d 102 (1992)

- Franklin v. Mazda Motor Corp., 704 F. Supp. 1325 (1989)

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