

No. 33287 *Debbie Plumley v. West Virginia Department of Health and Human Resources
/ Office of Health Facility Licensure and Certification*

FILED

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RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

OF WEST VIRGINIA

Starcher, J., dissenting:

In this case, a circuit judge saw the parties, heard the witnesses, reviewed the facts and carefully concluded that appellee Debbie Plumley was qualified to operate her health care home. The majority opinion substituted its own judgment for that of the circuit judge, and I therefore dissent.

The sole basis cited by the Department for requiring Ms. Plumley to close her facility was an incest conviction that occurred some twenty years ago. The record indicates that, while drunk, Ms. Plumley saw her husband have inappropriate contact with her daughter while the three were sharing a bed. Ms. Plumley reported the incest to the police, pleaded guilty to incest for permitting it to occur, and served a five-year sentence. All of the other criminal charges raised in the majority opinion are irrelevant, because the Department never noted or relied upon those charges in its proceedings. But the majority opinion includes them anyway, just to make you understand why they don't like Ms. Plumley.

The circuit judge actually heard the same evidence, saw Ms. Plumley's demeanor, and concluded that she was fit to operate her facility. The circuit judge justly and fairly found that the indiscretions of a number of years gone by should not permanently reduce or take away a person's right to earn a living or livelihood. When a person's current

actions demonstrate fitness for a particular activity, the circuit court found that government regulators should permit the person to engage in that activity.

But the majority opinion does not share this touching sentiment with the circuit judge. Instead, the majority opinion substituted its own philosophy for that of the trial court, and found that a person's past bad acts – no matter how far in the past they might be – are a permanent bar and a permanent penalty. No amount of contrition or rehabilitation can ever be considered; a person's past will always haunt their future.

I do not share the majority opinion's negative view of society. But, more importantly, I would not have substituted my own judgment of Ms. Plumley's capacity to operate a care home for that of a circuit judge, who actually heard and saw Ms. Plumley's explanation.

I therefore respectfully dissent.