Pennsylvania's Great Dissenter: Justice David N. Wecht

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Body

On a national level, U.S. Supreme Court Justice John Marshall Harlan was known as "the Great Dissenter" in the history of jurisprudence. Justice Harlan was so designated, in part, given that he was the lone justice to dissent the 1896 decision in the case of

Plessy v. Ferguson

, one of the Supreme Court's most notorious and damaging decisions. In arguing against his colleagues' upholding of the constitutionality of segregation under the doctrine of "separate but equal," Justice Harlan delivered what would become one of the greatest and most cited dissents in the history of the U.S. Supreme Court.

On a more local level, Justice David N. Wecht, of the Pennsylvania Supreme Court, through a series of pointed and cogent dissenting opinions in which he parted ways from the majority, has established his mark as Pennsylvania's Great Dissenter. In a number of notable dissenting opinions over the past few years. Wecht has established his allegiance to settled legal precedent and the rule of law and has exhibited his excellent legal analytical skills and writing ability.

Railing Against a Majority 'Eager' to Change the Law

One such case evidencing Wecht's devotion to the rule of law and adherence to the doctrine of

stare decisis

can be seen in his dissenting opinion in the case of

Erie Insuracne Exchange v. Bristol

, 174 A.3d 578 (Pa. 2017) (Maj. Op. by Mundy, J.) (Wecht, J., Dissenting). In this case, the Pennsylvania Supreme Court held that the statute of limitations in an uninsured motorist case does not begin to run until there is an alleged breach of the insurance contract, i.e., the denial of a claim or a refusal to arbitrate by the carrier. This was a 6-1 decision with Wecht dissenting on procedural grounds.

The

Bristol

decision reversed the law set forth in the Pennsylvania Superior Court's previous ruling in the separate case of

Hopkins v. Erie

, 65 A.3d 452 (Pa. Super. 2013). In

Hopkins

, the Superior Court had held that the statute of limitations in an uninsured motorist (UM) benefits claim begins to run on the date of the accident.

By holding under the

Bristol

case that the statute of limitations instead begins to run at the alleged breach of the UM contract by way of a denial of coverage or a refusal to arbitrate, the majority of the Pennsylvania Supreme Court offered protections to plaintiffs given that, in most cases, the statute of limitations on UM claims would never begin to run as automobile insurance carriers rarely ever deny coverage for UM claims or refuse to arbitrate for fear of exposure to bad faith allegations.

Wecht showed his penchant for proper judicial restraint and dissented from the majority's opinion in

Bristol

based upon his conclusion that the issue of when the statute of limitations begins to run on an uninsured motorist claim was not even properly before the Court in that case. He noted that the "apparently eager" majority disregarded that procedural defect and was raring "to overturn more than thirty years of Superior Court precedent." See

Erie Insurance Exchange v. Bristol

, 174 A.3d at 590.

Wecht noted in his dissenting opinion in

Bristol

that, in choosing to address a more expansive issue that was not even before the court, the majority was inexplicably allowing the injured party "to challenge the exact legal principle that he conceded in the lower courts."

Wecht confirmed in his dissenting opinion that a review of the record from the lower courts in this matter confirmed that the injured party "waived the issue that the majority resurrects and resolves on the merits."

Wecht confirmed that the injured party had not only waived the issue but had even conceded the issue in the court below in his response to the summary judgment motion that brought the question before the trial court in the first place. Moreover, Wecht confirmed that the injured party did not even include any arguments in his Superior Court brief regarding the issue of when the statute of limitations commenced.

In his dissent in

Bristol

, Wecht chastised the eager majority for taking the previous "extraordinary" step in the matter by issuing an order amending the court's original grant of

allocatur

in order to adopt a wider question presented on appeal that covered the statute of limitations question exactly as the injured party had framed it, for the first time, in his petition for allowance of appeal.

As noted by Wecht, "Ironically, the issue that Bristol presented in his petition for allowance of Appeal - much like the arguments Bristol made in the courts below - had absolutely nothing to do with the commencement of the applicable statute of limitations." Yet, according to Wecht, the majority "ventured that it '

understands'

this issue to encompass a determination of the time at which a cause of action accrues ..."

Wecht emphatically noted in his dissent that he did "not share in this creative 'understanding'" devised by some of the other justices who wanted to review the statute of limitations issue.

He further reiterated that, even if it was somehow understood that the question presented before the court could be deemed to cover the issue of when the statute of limitations began to run, the injured party had still failed to preserve the issue for appellate review in any event.

Wecht concluded his blistering dissent in

Bristol,

with these well-reasoned words

to be heeded by the wary:

"For whatever reason, and to my puzzlement, today's majority is willing to overlook the many procedural defects in this case, even though this court has considered those same defects to be inexcusable in numerous other appeals. Although the majority does not tell us why Bristol's case warrants such special indulgences, what is clear is that the time has come for this court-either by rule or by decision-to commit to clear standards for determining whether a particular case warrants departure from our ordinary issue preservation doctrines. Absent such standards, the unpreserved issues that the court regularly declines to consider will continue to be indistinguishable from those that we idiosyncratically agree to resolve. In my view, such arbitrary and selective enforcement of our Rules of Appellate Procedure is ill-advised." See

Erie Insurance Exchange v. Bristol

, 174 A.3d 578, 592 (2017).

Decrying Encroachments Upon Legislature's Law-Making Duties

In a number of other cases, Wecht wielded his keyboard to write cogent dissenting opinions that decried the encroachment of the other Justices on the Bench upon the Pennsylvania Legislature's law-making function.

For example, at the beginning of 2019, Wecht issued a dissenting opinion in the famous

Gallagher v. GEICO

case in which the majority attempted to eradicate the household exclusion across the board. Wecht decried what he saw as the other justices of the court "upending ... well-established precedent" and supplanting its own judgment over that of the Legislature in this area of the law.

The case of

Gallagher v. GEICO

was not the only time the justice sparred with the other members of the court about their departures from precedent. In an Oct. 31, 2019, dissenting opinion in the case of

Yanakos v. UPMC

, 218 A.3d 1214 (Pa. 2019) Wecht again distanced himself from the ruling of the majority of the Pennsylvania Supreme Court in another high-profile case involving medical malpractice issues. In that case the majority found the long-standing seven-year statute of repose passed by the Pennsylvania General Assembly was unconstitutional.

In his powerful dissenting opinion, Wecht stated that the majority's standard for reviewing the issue was "contrary to our precedent" and "encroached" on the legislature. He further noted that he felt compelled to dissent from this decision since "it is not this court's role to upend duly enacted legislation simply because we might sometimes deem it imperfect or unwise."

In its more recent decision in the same case of

Yanakos v. UPMC

, 224 A.3d 1255 (Pa. Jan. 31, 2020), a majority of justices on the Pennsylvania Supreme Court declined to reconsider its original decision in this case from 2019 in which the court struck down the statute of repose thereby allowing a wider avenue of recovery for Plaintiffs in a certain class of medical malpractice claims.

In his dissent to that decision, Wecht again aptly expressed his ardent disagreement with the majority's refusal to reconsider its decision and wrote that "the filing before us illustrates that the decision in

Yanakos

was not just incorrect, but was confused as well. Confused about the law. Confused about procedure. Confused about insurance. Confused about the questions presented."

Wecht also noted that not only did the appeal in

Yanakos

take on a life of its own after it reached the Pennsylvania Supreme Court but "this [Pennsylvania Supreme Court] breathed new life into it" by expanding the issue before the court. Wecht found that this expansion of the issue by

the justices in the majority enabled those justices to address more expansive issues and issue a decision of a wider scope on matters that, in the words of Wecht's dissent, the plaintiff "had never argued and that the lower courts had never considered."

Wecht also indicated that he wanted a reconsideration of the decision in

Yanakos

because the decision by the majority in its

Yanakos

decision from 2019 ruling that the statute of repose was unconstitutional "ignored precedent, misinterpreted the remedies clause of the Pennsylvania Constitution, and incorrectly adopted (and then misapplied) the intermediate scrutiny test."

In chastising the majority for refusing to allow for a reconsideration of the issues presented in

Yanakos

, Wecht went on to write, "Reargument is a fail-safe. It gives an appellate court the opportunity to admit that it made a mistake. This court should have taken advantage of that opportunity today." For these reasons, Wecht dissented from the decision by the majority in its 2020 decision in

Yanakos

to preserve their previous decision by denying any reconsideration of the issue.

Taking A Stand Against a Freewheeling Majority

In its 2019 decision in the case of

Sayles v. Allstate Insurance,

219 A.3d 1110 (Pa. 2019), the Pennsylvania Supreme Court found that standard language found in automobile insurance policies requiring insureds to attend independent medical examinations (IME) at the request of carriers in the first party medical benefits context conflicted with the law set forth in Pennsylvania's Motor Vehicle Financial Responsibility Law. The Supreme Court ruled that carriers must instead institute motions practice and petition the trial court for approval of a request to refer an insured to an IME.

Wecht noted in

Sayles

that, as the applicable law provided at the time, "nothing in the text of the MVFRL mandates that insurers invoke the judicial process in order to arrange for a medical examination of the insured that is authorized through prior contractual agreement." As such, Wecht stated that he found himself "compelled to dissent."

In his dissenting opinion in the

Sayles

case, Wecht noted that the decision by the majority in this case was not one that the Pennsylvania Supreme Court could "adopt and impose by judicial fiat." Rather, according to Wecht, it was the job of the General Assembly to make such changes to the law and Wecht emphasized that the Pennsylvania Supreme Court was "not empowered to re-write the MVFL in the meantime."

In this regard, Wecht noted in his dissent

Sayles

that, as he has "explained in previous opinions, he disagrees respectfully with this court's freewheeling and unwarranted invocation of 'public policy' in cases involving the MVFRL."

Wecht noted that the basic questions presented before the court in the

Sayles

case was simply whether the insurance policy provisions at issue conflict with the MVFRL and are, therefore, not enforceable. He chastised the majority, noting that the majority's"framing of that question euphemistically or vaguely as something rooted in "public policy," rather than statutory interpretation, has created a misperception that jurists posses some inherent lordly authority to displace written agreements based upon our own idiosyncratic conceptions of what strikes us as desirable or undesirable "'part of policy.'"

He also powerfully stated that the majority's "resort to this 'public policy' device throughout our MVFRL jurisprudence has confused more than it has clarified. More importantly, it risks an appearance of jurisprudence that is arbitrary, unprincipled, and ultimately illegitimate. It should be abandoned."

It is noted that Wecht had made a similar argument in his dissenting opinion in the case of

Gallagher v. Geico

, 201 A.3d 131, 142 n. 5 (Pa. 2019) (Wecht, J, Dissenting) in which the Pennsylvania Supreme Court majority attempted to eradicate the household exclusion across the board and well beyond the facts before it. In that dissent, Wecht wrote that the Pennsylvania Supreme Court's decision in

Gallagher

was "premised more upon a policy judgment than upon a discernible legal principle."

At the end of his dissent in the

Sayles

decision, Wecht noted that the majority's "novel interpretation of the MVFRL is yet another sign that this court has assumed a quasi-legislative or even legislature-supervising role in the automobile insurance arena." In the end, Wecht felt that the majority's decision in

Sayles

to render IME clauses in automobile insurance policies as unenforceable under public policy arguments "is not a judgment call that this court is authorized, or even well-equipped, to make."

A review of the above dissenting opinions confirms that Justice Wecht's reasoning, analysis of the law, and excellent writing ability establishes him as one of the great justices in the history of the Pennsylvania Supreme Court. His decisions, both when he is in the majority of the court and when dissenting, confirm that he understands the role of the court in our society, including with respect to applying the law as it has been made by the Legislature and leaving law-making function to that separate branch of government. Whether he writes a majority opinion or a dissenting opinion, it is highly recommended that his decisions be read for, even if you disagree with his decision, your own writing may be improved by reading his writing.

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