

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State ex rel. Taylor v. Nibert, 220 W. Va. 129

640 S.E.2d 192 (2006) · No. No. 33175 · Decided November 30, 2006

SUMMARY

The Supreme Court of Appeals of West Virginia considered a petition for a writ of prohibition challenging the transfer and consolidation of several uninsured and underinsured motorist coverage cases with a class action in Roane County. The court held that the cases did not arise from the same transaction or occurrence under West Virginia Rule of Civil Procedure 42(b), and that the transfer was improper. It vacated the transfer order as to the petitioners, directed that their cases be returned to their chosen forums, and held that advance notice and an opportunity to object are required before transfer under Rule 42(b).

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Maynard, Justice
JURISDICTION	West Virginia
DECIDED	November 30, 2006
DOCKET	No. 33175
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petition for a writ of prohibition challenging a circuit court order transferring three civil actions to Roane County and consolidating them with a pending class action, as well as an order granting preliminary class certification.
STANDARD OF REVIEW	A discretionary writ of prohibition is evaluated under the five factors identified in State ex rel. Hoover v. Berger, with substantial weight given to whether the lower tribunal committed clear legal error. Prohibition is not a substitute for appeal or certiorari.
PRECEDENTIAL VALUE	Published West Virginia Supreme Court of Appeals opinion; precedential.

PARTIES

Thomas Taylor, Melody and Daryl Johnson, Leonard and Iris Lucas v. The Honorable David W. Nibert, Judge of the Circuit Court of Roane County, Nationwide Mutual Insurance Company, George G. O'Dell, Jr., Stacy McKown O'Dell

TOPICS

civil procedure appellate procedure class actions insurance coverage joinder

PRACTICE AREAS

Civil procedure Appellate procedure Insurance law Class actions Extraordinary writs

QUESTIONS PRESENTED

1. Whether the Circuit Court of Roane County exceeded its legitimate powers by transferring and consolidating petitioners' cases under West Virginia Rule of Civil Procedure 42(b) when the cases did not arise out of the same transaction or occurrence.
2. Whether a court may transfer an action under Rule 42(b) without giving the parties in the action to be transferred notice and an opportunity to object.
3. Whether petitioners' challenge to the preliminary class-certification order remained justiciable after the court determined that their cases were improperly transferred.

HOLDINGS

1. The circuit court exceeded its legitimate powers by transferring petitioners' cases to Roane County because the cases did not arise out of the same transaction or occurrence within the meaning of Rule 42(b). Common legal questions and receipt of similar insurance mailings were insufficient to establish the required logical relationship.
2. When a motion is made to transfer an action under Rule 42(b), the movant must give notice to all parties in the cases to be transferred. Those parties must have an opportunity to object before transfer, and, if requested, the transferring court must hold a hearing to determine whether transfer is proper.
3. After determining that petitioners' cases should not have been transferred to the Roane County class action, the court held that petitioners' arguments concerning the class-certification order were moot.

KEY QUOTATIONS

"Accordingly, we now hold that when a motion is made to have an action transferred pursuant to Rule 42(b) of the West Virginia Rules of Civil Procedure, the movant must give notice to all parties in the case(s) to be transferred. The parties in the case(s) to be transferred must be given the opportunity to object prior to the transfer and if requested, the transferring court shall hold a hearing to determine whether transfer is proper under Rule 42(b)." (at 198)

"The fact that the petitioners received offers for uninsured and underinsured motorist coverage from Nationwide by mail in 1993 and/or 1999 is not the transaction or occurrence which gave rise to their civil

actions.” (at 198)

FACTUAL BACKGROUND

Petitioners brought three separate actions against Nationwide based on alleged failure to pay uninsured and underinsured motorist benefits under automobile insurance policies. Their cases involved separate policies, coverage circumstances, and motor vehicle accidents, and were filed in Jefferson and Marshall Counties. The Roane County circuit court transferred and consolidated them with a pending class action concerning alleged defects in Nationwide's 1993 and 1999 mass mailings offering uninsured and underinsured motorist coverage, without prior notice or an opportunity to object.

PROCEDURAL HISTORY

Petitioners' uninsured and underinsured motorist coverage actions were filed in Jefferson and Marshall Counties. The Circuit Court of Roane County transferred and consolidated the cases with a pending class action under West Virginia Rule of Civil Procedure 42(b), and conditionally certified classes including a mandatory punitive-damages subclass. After petitioners' motion to decertify was denied, they sought prohibition in the Supreme Court of Appeals of West Virginia. The Supreme Court granted the writ as moulded, vacated the transfer order as to petitioners' cases, and ordered their cases returned to their chosen forums.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The January 27, 2005 Transfer Order was vacated with respect to petitioners' civil actions, and the circuit court was ordered to transfer those cases back to their chosen forums immediately.

CASES CITED

- Crawford v. Taylor, 138 W. Va. 207, 75 S.E.2d 370 (1953)
- State ex rel. Hoover v. Berger, 199 W. Va. 12, 483 S.E.2d 12 (1996)
- In re West Virginia Rezulin Litigation, 214 W. Va. 52, 585 S.E.2d 52 (2003)
- State ex rel. Strickland v. Daniels, 173 W. Va. 576, 318 S.E.2d 627 (1984)
- Revere Copper and Brass Inc. v. Aetna Casualty and Surety Co., 426 F.2d 709 (5th Cir. 1970)
- In re Lazar, 237 F.3d 967 (9th Cir. 2001)
- State Automobile Mut. Ins. Co. v. Youler, 183 W. Va. 556, 396 S.E.2d 737 (1990)
- State ex rel. Bank of Ripley v. Thompson, 149 W. Va. 183, 139 S.E.2d 267 (1964)