

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Leslie Equipment Co. v. Wood Resources Co., 224 W. Va. 530

687 S.E.2d 109 (2009) · No. No. 34712 · Decided October 30, 2009

SUMMARY

The Supreme Court of Appeals of West Virginia held that constructive service under West Virginia Rule of Civil Procedure 4(e)(2) did not, by itself, confer personal jurisdiction over nonresident defendants. Because the plaintiff did not use the statutory long-arm procedure under West Virginia Code § 56-3-33, the default judgment was void and unenforceable for lack of in personam jurisdiction. The court reversed the circuit court's refusal to set aside the judgment under Rule 60(b)(4).

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	McHugh, Justice; Davis, Justice; Ketchum, Justice; Workman, Justice
JURISDICTION	West Virginia
DECIDED	October 30, 2009
DOCKET	No. 34712
DISPOSITION	reversed
PROCEDURAL POSTURE	Appellants appealed the Circuit Court of Wirt County's denial of their motion under West Virginia Rule of Civil Procedure 60(b)(4) to set aside a default judgment as void for lack of personal jurisdiction.
STANDARD OF REVIEW	A trial court's decision concerning a default judgment is reviewed for abuse of discretion, but a pure question of law is reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Christopher Todd Zach, Ramona C. Goeke v. Leslie Equipment Company

TOPICS

default judgment personal jurisdiction service of process due process civil procedure

PRACTICE AREAS

civil procedure personal jurisdiction default judgments service of process commercial litigation

QUESTIONS PRESENTED

1. Whether constructive service by certified mail under West Virginia Rule of Civil Procedure 4(e)(2), without service through the Secretary of State under West Virginia Code § 56-3-33, conferred personal jurisdiction over nonresident defendants in an action seeking a personal monetary judgment.
2. Whether the default judgment was void and subject to being set aside under West Virginia Rule of Civil Procedure 60(b)(4).

HOLDINGS

1. Constructive service of process under West Virginia Rule of Civil Procedure 4(e)(2) does not, by itself, confer personal jurisdiction over nonresident defendants for purposes of entering an in personam monetary judgment. Personal jurisdiction arose by operation of law only through compliance with the statutory method in West Virginia Code § 56-3-33, which the plaintiff did not use.
2. The default judgment was void and unenforceable for lack of personal jurisdiction, and the defendants timely moved to vacate it within a reasonable period after learning of the judgment.

KEY QUOTATIONS

“although valid service under Rule 4 provides appropriate notice to persons against whom claims are made, it does not ensure that the defendant is also within the in personam jurisdiction power of the ... court” (687 S.E.2d at 114)

“As a result, in personam jurisdiction does not arise by operation of law when a nonresident defendant is constructively served with process pursuant to the provisions of Rule 4 of the West Virginia Rules of Civil Procedure.” (687 S.E.2d at 115)

“By failing to avail itself of the statutory method that vests our trial courts with in personam jurisdiction over nonresident defendants, the constructive service effected upon Appellants led to a default judgment that is void and unenforceable” (687 S.E.2d at 115)

FACTUAL BACKGROUND

Leslie Equipment filed an action to recover a debt allegedly arising from Wood Resources' purchase of goods and services on credit. Christopher Todd Zach and Ramona C. Goeke, nonresident officers of Wood Resources, were served outside West Virginia by certified mail under Rule 4(e)(2), rather than through the Secretary of State under West Virginia's long-arm statute. After they failed to file responsive pleadings, the circuit court entered a joint and several default judgment against them for \$22,459.70. Their counsel learned of the judgment shortly afterward and moved to set it aside for lack of personal jurisdiction.

PROCEDURAL HISTORY

Leslie Equipment sued Wood Resources Company, L.L.C., and its officers to recover an alleged debt. The circuit court served the nonresident officers by certified mail under West Virginia Rule of Civil Procedure 4(e)(2), entered a default judgment for \$22,459.70, and denied the officers' motion to set it aside. The Supreme Court of Appeals of West Virginia reversed, holding that the judgment was void and unenforceable for lack of personal jurisdiction.

DISPOSITION

reversed

CASES CITED

- Toler v. Shelton, 157 W. Va. 778, 204 S.E.2d 85 (1974)
- Chrystal R.M. v. Charlie A.L., 194 W. Va. 138, 459 S.E.2d 415 (1995)
- State ex rel. Smith v. Bosworth, 145 W. Va. 753, 117 S.E.2d 610 (1960)
- Pries v. Watt, 186 W. Va. 49, 410 S.E.2d 285 (1991)
- Schweppes U.S.A. Ltd. v. Kiger, 158 W. Va. 794, 214 S.E.2d 867 (1975)
- Smith v. Smith, 140 W. Va. 298, 83 S.E.2d 923 (1954)
- Lozinski v. Lozinski, 185 W. Va. 558, 408 S.E.2d 310 (1991)
- In re Celotex Corp., 124 F.3d 619 (4th Cir. 1997)
- Abbott v. Owens-Corning Fiberglas Corp., 191 W. Va. 198, 444 S.E.2d 285 (1994)
- Easterling v. American Optical Corp., 207 W. Va. 123, 529 S.E.2d 588 (2000)
- Central Operating Co. v. Utility Workers, 491 F.2d 245 (4th Cir. 1974)
- Fabian v. Kennedy, 333 F. Supp. 1001 (N.D.W. Va. 1971)
- Evans v. Holt, 193 W. Va. 578, 457 S.E.2d 515 (1995)
- State v. Davis, 178 W. Va. 87, 357 S.E.2d 769 (1987)
- Honegger v. Coastal Fertilizer & Supply, Inc., 712 So. 2d 1161 (Fla. Dist. Ct. App. 1998)
- Ford Motor Credit Co. v. Shaw, 108 F.R.D. 218 (N.D. Ala. 1985)
- Insurance Corp. v. Compagnie des Bauxites, 456 U.S. 694 (1982)
- Grant v. Swank, 74 W. Va. 93, 81 S.E. 967 (1914)

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