

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Thomas F. Basile v. The Calwell Practice, PLLC and William Stuart Calwell, Jr.

Basile · No. No. 16-0117 · Decided February 17, 2017

SUMMARY

The Supreme Court of Appeals of West Virginia dismissed the appeal as to several circuit court orders because the petitioner failed to timely appeal those orders. The court affirmed the denial of the petitioner's Rule 60(b) motion, concluding that the motion merely sought to relitigate issues previously decided in an action involving an alleged contractual obligation to pay attorney's fees.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Allen H. Loughry II; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	February 17, 2017
DOCKET	No. 16-0117
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner appealed four orders of the Kanawha County Circuit Court. The Supreme Court of Appeals dismissed the appeal as to three orders because the notices of appeal were untimely and affirmed the order denying relief under West Virginia Rule of Civil Procedure 60(b) from the underlying dismissal.
STANDARD OF REVIEW	The denial of a Rule 60(b) motion is reviewed for abuse of discretion. An appeal from denial of a Rule 60(b) motion ordinarily reviews only the denial order, not the merits of the underlying judgment. Timeliness of an appeal is jurisdictional.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision under West Virginia Rule of Appellate Procedure 21
PARTIES	Thomas F. Basile v. The Calwell Practice, PLLC, William Stuart Calwell, Jr.

TOPICS

appellate jurisdiction

final judgment rule

motion for reconsideration

motions to dismiss

breach of contract

PRACTICE AREAS

civil procedure

appellate procedure

contracts

remedies

QUESTIONS PRESENTED

1. Whether the Supreme Court of Appeals had jurisdiction to review the November 6, 2013, March 11, 2014, and June 23, 2015, circuit-court orders when Basile did not appeal them within the applicable appeal period.
2. Whether the denial of Basile's Rule 60(b) motion seeking relief from the June 23, 2015, dismissal order was an abuse of discretion.
3. Whether an appeal from the denial of a Rule 60(b) motion permits review of the merits of the underlying judgment.

HOLDINGS

1. The Court lacked jurisdiction to review the June 23, 2015 dismissal order because it was a final appealable order and Basile did not appeal it within four months of entry.
2. The Court lacked jurisdiction to review the November 6, 2013 order denying Rule 11 sanctions and the March 11, 2014 order denying relief from that order because both orders were final and Basile did not timely appeal them.
3. The circuit court did not abuse its discretion by denying Basile's Rule 60(b) motion because the motion merely sought to relitigate issues previously presented and decided in connection with the renewed motion to dismiss.

KEY QUOTATIONS

“An appeal of the denial of a Rule 60(b) motion brings to consideration for review only the order of denial itself and not the substance supporting the underlying judgment nor the final judgment order.” (at 6)

“In reviewing the denial of petitioner’s Rule 60(b) motion, our function is limited to deciding whether the circuit court abused its discretion in ruling that sufficient grounds for disturbing the finality of the judgment were not shown in a timely manner.” (at 6)

FACTUAL BACKGROUND

Basile and the Calwell Practice entered an agreement concerning payment of attorney fees if a court shifted fees from David Ford to Basile or imposed monetary sanctions payable to Basile. After the Logan County Circuit Court increased Basile's fee allocation by two percent and the resulting order was affirmed, Basile demanded \$40,000 from the Calwell Practice when Ford did not pay. Basile ultimately accepted \$74,504.86 from Ford,

after which the Kanawha County court found the respondents' request for declaratory or injunctive relief moot and later dismissed Basile's related claims.

PROCEDURAL HISTORY

Basile filed a Kanawha County civil action alleging breach of contract, fraudulent inducement, breach of a confidentiality provision, conspiracy, and abusive process. The circuit court dismissed the respondents' declaratory-judgment or injunction motion as moot, denied Basile's Rule 11 sanctions motion, later dismissed Basile's civil action, and denied his Rule 60(b) motion for relief from that dismissal. On appeal, the Supreme Court held that it lacked jurisdiction to review the earlier orders because Basile did not timely appeal them, and it found no abuse of discretion in the denial of the Rule 60(b) motion because the motion merely sought to relitigate issues already decided.

DISPOSITION

dismissed

CASES CITED

- Ford v. The Calwell Practice, No. 11-0882 (W. Va. Supreme Court, June 8, 2012) (memorandum decision)
- Ellis v. Hare, Logan County Circuit Court Case No. 08-C-297
- Forshey v. Jackson, 222 W. Va. 743, 671 S.E.2d 748 (2008)
- James M.B. v. Carolyn M., 193 W. Va. 289, 456 S.E.2d 16 (1995)
- Henderson ex rel. Henderson v. Shinseki, 562 U.S. 428 (2011)
- Toler v. Shelton, 157 W. Va. 778, 204 S.E.2d 85 (1974)
- W. Va. Department of Energy v. Hobet Mining and Construction Co., 178 W. Va. 262, 358 S.E.2d 823 (1987)
- Hubbard v. State Farm Indemnity Co., 213 W. Va. 542, 584 S.E.2d 176 (2003)
- Powderidge Unit Owners Association v. Highland Properties, Ltd., 196 W. Va. 692, 474 S.E.2d 872 (1996)
- State ex rel. Cooper v. Caperton, 196 W. Va. 208, 470 S.E.2d 162 (1996)